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Supreme Court, U.S.
FILED

No: 06-1313

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In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Pepi Schaffler, BA, MSSS, JD PhD
Petitioner
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743

QUESTIONS PRESENTED

1. Did HSBC Bank USA formerly Marine Midland Bank and Manufacturers and Traders Trust Co Bank-M & T Bank in a racketeering conspiracy with others , embezzle, convert, steal and "launder" $95.600 belonging to Petitioner, and did they thereafter engage in 20 years of brazen lies, fraud, deceit, serial perjury, suborning perjury in others , false pretenses and other malfeasance to cover up their criminal and dastardly acts , and deprive Petitioner of her money?

2 . Is Petitioner entitled to restitution damages of $ 95.600, compounded interest from Nov 8, 1985, $65.000 in legal fees paid to seven law firms , and punitive damages of at least $250.000 ?

3 . Did Mr. Scott Miller Esq, house counsel for HSBC and MM , and Ms. Cheryl Storie Esq. counsel for M& T knowingly and intentionally file many hundreds of false and perjured documents with the courts , lie to them in oral arguments disrespecting the judicial process and the laws they have sworn to uphold?

4. Did this depraved misconduct interfere with the courts ability to perform it's duties as per their constitutional oath?

5. . Did HSBC (MM) and M&T and their respective attorneys Mr. Scott Miller Esq. and Ms Cheryl Storie Esq. violate the criminal laws, the fiduciary duties of the above named banks , U.C.C. Sections 3 and 4 addressing banking malfeasance, the Rules of Professional Conduct for Attorneys, and among other show gross disrespect for law and the courts?

6. Despite the astonishing and outrageous legal perversions of the past 20 years has Petitioner prevailed in all the lower courts and three appeals (possibly four) that produced written opinions?

7. Was the Appellate Court's sudden and unexpected dismissal of Petitioner's claim based on bias, retaliation and punishment for publicly noting the criminality , mendacity, ignominy, as well as depraved exploitation and waste of judicial resources by the Respondents who hold iconic status and campaign contributions in Western NY State , and was the U.S. Constitution offended?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondents HSBC BANK is an International bank full name Hong Kong Shanghai Banking Corporation that through an entity known as HSBC USA Bank acquired Marine Midland Bank a few years ago, and located their headquarters in Buffalo, New York in the building formerly known as the Marine Midland Tower , now renamed HSBC Tower. HSBC USA Bank is a full service bank offering commercial and personal loans, mortgages and credit cards. They have branches in many parts of the country.. In a more recent press release HSBC USA Bank announced that they "planned to invade the California market", and that they were planning to acquire Asia Bank and the Bank of Bermuda.. HSBC is publicly held and the shares are publicly traded.

Respondent M&T Bank -Manufacturers and Traders Trust Company is headquartered in Buffalo New York, and is a full service bank with branches in many parts of the country. Under the "brand ownership" of M&T there are the credit card division, commercial loans entity, and others. M&T Bank is publicly owned and the shares are publicly traded.

Submitted

Dr. Petri Schafler

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JURISDICTION

This Court has jurisdiction in this case pursuant to 28 U.S.C. # 1257 as well as other Constitutional provisions

THE DECISION BELOW

The decisions below are unpublished and unexplained . A timely filed motion for permission to appeal was denied by the New York Court of Appeals on February 14, 2006. On Nov. 10 2005, the App. Div Fourth Dept. of NYS Supreme Court vacated and dismissed it's own previous judgments in Petitioner's favor.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

The following are the constitutional and statutory provision involved in the instant matter: Article I, Sec8, Article VI Sec. 2, Amendments V and XIV all of the United States Constitution , U.S.C. Title 12,: "The laws on Banks, banking and fiduciary responsibilities " UCC 3-419 and other, NY. DRL 236 and other NY State rules .

STATEMENT OF THE CASE

On November 8, 1985 Petitioner had her $95.600 embezzled , stolen, converted and laundered through a racketeering criminal forgery conspiracy by the Respondents. Thereafter these grotesque arrogant, deceptive malfeasants exploited and degraded the judicial system and the judicial system's ability to validate Petitioner's rights, by a 20 year choreographed kabuki of serial perjury, shameless and brazen lying , extending their criminal acts of embezzlement, theft and betrayal of fiduciary duties further through numerous false and frivolous judicial hearings and pleadings: "the stolen funds are here , there , waiting for another decision " , through six courts, and three frivolous appeals. On Dec. 26, 2003 through Respondent's documents Petitioner's belief was confirmed: the embezzled funds were laundered at Respondent's banks: by prearrangement depositing the two forged checks and several days later the funds were removed cleansed. The 20 years of litigation were theater by corrupt ,depraved individuals. For exposing this malfeasance and criminality by these iconic NYS fiduciary institutions and their attorneys-officers of the court, albeit lying ones, Petitioner was retaliated against, and her claim-after 20 years of affirmation -was suddenly dismissed.

STATEMENT OF RELEVANT FACTS

On N 7, 1985 , in a conspiracy including two federally chartered iciary institutions namely M&T Bank , Marine Midland Bank, now HSBC Bank USA and D. Summer, all located in Buffalo New York, embezzled, stole and laundered two forged checks in amount of $79.600 and $16.000 belonging to Petitioner , with her as payee , without her endorsement.(App) which had been removed from an account at Merrill Lynch et al This crime was planned in detail by the coconspirators to prevent Petitioner from learning of the theft and to maximize the potential of her never being able to trace the crime and recover her funds.

Subsequently, even though the facts and the laws on forged checks, theft, embezzlement and money laundering are quite clear and on point, the Respondents nevertheless refused to indemnify petitioner. Instead the two institutions, and their attorneys: Mr.. Scott Miller Esq . house counsel for MM bank, and Ms .Cheryl Storie counsel for M&T while exploitatively cloaking themselves in the trust that one has in banks, and the perception that attorneys are officers of the court and take an oath to be truthful , embarked on a 20 year crime spree of fraud, racketeering deceit, serial perjury , brazen lies , filing false paper , repeatedly lying to the tribunal ,treating the lower courts as if they were employed retainers. there to serve them. Respondent attorneys were fully aware of their conduct , and their immersion in criminality.-it had become a sport. This 20 year criminal "sport" carried through six judges, four appeals., seven law firms that had represented Petitioner, an enormous waste of time, resources, harm to petitioner and shame to them.

(a) Background

The second name on the stolen, forged check Donald Summer, is a former spouse , who had no interest in the funds in the account, and his name had been added for convenience only - which he knew. Petitioner and Summer , married in 1967-a second marriage for both to which petitioner brought two young children, and separate assets. In the subsequent decade these assets grew through inheritances from her family. Summer had no assets outside the marriage, but he was a full partner in a large law firm in Buffalo, providing a very nice lifestyle for the family

Petitioner had always kept her non marital assets in her name and separate, to use for her children if needed. In the early 1980ties some major concomitant events occurred which lead to Donald Summer's name being added to the account at Merrill Lynch , all without donative intent, and so made clear. In late 1982 Summer was suddenly expelled from the law firm for defrauding the partnership , pocketing legal fees and other misconduct. While this was sudden for Petitioner, it was the result of a multi year inquiry. This expulsion left the family without a reliable predictable source of income. Concurrently Petitioner had been diagnosed with a life threatening illness and she traveled for treatment to major medical facilities. As a member of the law firm , the children's needs would always be met , but this having ended ,other provisions for them needed to be made.. Therefore Petitioner added the name of D. Summer to the account of her funds at Merrill Lynch. Petitioner continued to manage the account, transact business, and maintain the check book.

(b)The criminal activities

Shortly after the above described events D. Summer decompensated and degenerated into a life of crime, of cocaine dealing with gangsters,(1) prostitution, money laundering, stolen cars, stolen boats ,insurance fraud, bank fraud converting clients funds (2) forging their names and identities, filing false financial statements, tax fraud and being a target of the New York State Organized Crime Strike Force .Almost everyone he was involved with was either currently in prison, on the way there or unindicted cooperating felons. In this life of crime Summer had two very amenable cooperating banks: M&T and Marine Midland now HSBC bank. , where he laundered all his illegal funds along with the ill gotten gains of others . Petitioner informed Summer that she was planning to divorce him, a more cumbersome act in NY State than in many no fault jurisdiction.

(1) D. Summer with his criminal associates had used the marital vacation home in Florida to bring cocaine to Buffalo NY, in pizza boxes.

(c) Embezzlement, theft , conversion , lies, money laundering, unbridled criminality.

Like many criminals, Summer extended his immersion in deviancy. In October 1985 he went to the Buffalo Savings bank where petitioner had a certificate of Deposit for $101.000 and persuaded a clerk to add his name to the account, which the clerk did. But within days , the error was detected and he was notified that this was an error , and he would not have been able to access these funds. His criminality failed him. (App) The Merrill Lynch monthly statement arrived monthly on the fifth day . On Nov. 5 1985 the account held $116.159 in cash and securities. (App) The December statement was hijacked by Summer from the post office. Having been away over the holidays, Sat Jan 12, 1986 was the first opportunity to read all the mail. Horror struck: the Merrill Lynch account held $5.500.Suspecting error first , it took several days to unravel the facts: After the November statement , on November 7, 1985 Summer presented himself at Merrill Lynch, told a lie that Petitioner had asked him to immediately retrieve $100.000 for an investment , and she forgot to give him a check. Merrill Lynch encoded two checks on their drawee bank , which is Respondent M&T. All the cash in the account amounted to $95.600 and he received two checks one for $16.000 and the other for $79.600.The Checks were titled to Pepi Summer and Donald Summer.(App)By prearrangement Summer took these checks directly to Respondent MM bank endorsed them to himself and deposited them without Petitioner's endorsement. The $79.600 was deposited in an account titled "Attorney trust" account. These checks were "laundered " at MM, and the funds were removed 13 days later. Respondent M&T also participated in this criminal conspiracy and honored these forged checks.

(2) Eventually Summer faced a disbarment proceeding in which Petitioner testified as a witness, and he was suspended for 6 month. , and ordered restitution to the Bar Ass. in amount of $90.000They have a fund that comes from members and their dues which compensates victims of attorney fraud and theft. One victim died before he could collect h the $60.000 from him.

(d) The racketeering conspiracy by Respondents The embezzler had an extensive nefarious relationship with both these rogue banks.

(1)Marine Midland bank now HSBC bank USA

The extensive perfidy of money laundering and other illegal financial activities by Summer at MM bank was an ongoing process. The negotiating of the forged check and laundering of same at MM bank, was planned and prearranged there as D. Summer had "theft, fraud and we cover up for you privileges" there. Commerce in stolen cars, boats insurance fraud , cocaine revenue, checks cashed in non existent names, transactions absenting authenticity, transforming large checks to cash, in defiance of a court order, were all transacted at MM bank, now HSBC D. Summer also had numerous bank accounts there, without any, or with fake identification which in fact were marital accounts and Petitioner had a right to them. NYS Domestic Relations Law #236 holds that all property during the marriage is marital, except property from prior to, inheritance, or written agreements. At the time of marital dissolution the court has the authority to apportion. It is a measure of the relationship of D.Summer with MM bank that even though all the accounts at MM were marital, D.Summer felt that to obtain household funds, or review an account it would require a power of attorney for Petitioner which was arranged for. (App)The parties did have a joint credit card account in separate names. by MM bank.

When Petitioner attempted to review the records of the account as per the power of attorney . MM bank created a two month run around and a series of brazen lies -this "fiduciary " institution can generate lies faster than a street gang-and then pressured Summer to withdraw the power. Petitioner's counsel filed a complaint with the Comptroller of Currency (App) part of the United States Treasury Dept. who advised the president of MM bank, who took no action.

D. Summer had forged petitioner's name on the joint tax return did not pay the taxes , and the unpaid household bills had piled up. On Jan. 13, 1986 unrelated and before knowledge of the theft of her funds through forgery, where negotiated and laundered , Petitioner used one of her loan check to obtain $10,000 in her name and the valid power of attorney to access the marital bank account and wrote a check for $22.000 also in her name.(App)

(2) Manufacturers and Traders Trust Co. Bank.

Respondent M & T bank had an extensive business relationship with D. Summer. They were involved with him and others in a real estate transaction: the conversion of a large hotel in Buffalo NY into an office building. The relevant facts are that Summer misappropriated and converted hundreds of thousands of dollars from the project , paid off lovers (App) used one floor that had appropriate facilities to provide cocaine and prostitutes to many. Since these benefits were also provided to numerous employees and officers of M&T bank , they most likely were not going to challenge or even notice a forged check. Many members of the M&T community were being compensated in a currency they liked a lot. Even after the instant embezzlement, forgery and theft and they continued to negotiate his forged checks at M&T bank. (3)

The evidence is overwhelming that Respondents M&T bank and HSBC Bank USA the former Marine Midland bank, despite their being fiduciary institutions, are de facto rogue institutions, not to be trusted because they have been corrupted. Their legal representatives, Ms. Cheryl Storie Esq. for M&T, and Mr. Scott Miller Esq for MM bank now HSBC bank USA are mendacious, and ignoble . Mr. Miller Esq. is an uncommon miscreant, liar, and shameless serial perjurer. The embezzlement and laundering of petitioner's funds was a planned criminal act in a racketeering conspiracy by all three malfeasants .The wrongdoers saw this as an opportunity to compensate Summer for nefarious favors provided without using their own funds. They also felt secure that they are accomplished , sufficiently brazen and exploitative liars , in a community that favors them and therefore Petitioner will never prevail against them.

(3) several years after the present incident of theft, Summer continued to negotiate forged instruments at M&T bank. after such an incident , Petitioner had been contacted by a drawee bank regarding a transaction that Petitioner had no knowledge of, though her name had been forged. After verifying the facts, within a short time, an M&T bank employee came to petitioner's office to deliver the funds. .

(3) Requesting the return of the stolen funds, and refusal. The arrogance and fraud of the miscreants. Negotiations.

To fully appreciate the facts of this matter , they must be viewed through the prism of sordid massive malfeasance ,of lies , fraud and money laundering The stolen and converted funds were negotiated and laundered within days of each act i.e. steal, negotiate and launder at MM bank, now Respondent HSBC bank USA, within 14 days. (App) Yet for 20 years they have engaged in theater of the depraved ,impaired, exploitative, and evil pretending otherwise. Petitioner did not learn until January 12, 1986 of the theft of her funds on Nov. 7, 1985, not until Jan. 18 , 1986 that the forged checks had been negotiated at MM bank and not until Dec. 26 2003 that the funds have been laundered there and removed at once for parts unknown..(App) On Jan 22, 1986 Petitioner met with Mr.John Trasher a vice pres. at the bank ,(App)explained the theft and fraud , and requested that the funds be returned to Merrill Lynch,which would permit any party to prove ownership. He said they would not. When Petitioner challenged his attitude, reminded him of the law ,and that MM bank is a federally chartered fiduciary institution, and that they may not act like street thugs, Mr. Trasher replied: "look we do this all the time, get yourself a lawyer." . Petitioner had a lawyer. (Mr. Trasher as a bank officer , knowingly signed under oath many perjured documents, and affirmed swindles).

Thereafter Petitioner's lawyers had numerous communications with Respondents, but of course counsel did not know at the time that the funds were gone through laundering. Respondents were arrogant and defiant with an attitude of :"yes we did it, we will not comply with the law , and do what you can." In later encounters Petitioner's attorneys were taunted with "I can do things that you can not" It was erroneously assumed this was in reference to legal fees.. This Was about their constant, malignant pathological lying, and deceit And exploitation of the courts. On September 1, 1996, Petitioner had filed for the marital dissolution , which took 7 years to obtain. The NYS divorce laws are cumbersome and can be a burden .In June 1987 Petitioner filed suit in New York State Supreme Court against Respondents, seeking restitution damages in amount of $95.600,legal costs ,$250.000 in punitive damages , interest , and other relief. (App).

DECISIONS BELOW
INTRODUCTION

On November 7, 1985 Respondents Marine Midland bank now HSBC bank accepted two forged checks of Petitioner's funds in amount of $95.600 and laundered the funds 13 days later, these predicate acts satisfied the plans and requirements of the RICO conspiracy by the Respondents These were wrongful act covered by statutory accour ability. What followed were 20 years of criminal acts of covering up, of fraud , deceit, serial perjury , grotesque lies, gross , brazen and shameless exploitation of the judicial system. These acts of malfeasance are suited to street criminals and mob gangsters , and not to a federally chartered fiduciary institution and perpetrated by "officers of the court" Their malfeasance were statutory crimes Not until December 26 2003 did the full measure of Respondents depravity and perversior become known.

THE COMPLAINT.
MR. MILLER ESQ. LYING TO THE FIRST COURT

The learning that Petitioner's stolen money had been deposited at MM bank, now HSBC bank led to innumerable requests by her and her counsel, to return the funds to the Merrill Lynch account from which it was removed.. All were refused, and the refusal accompanied by another story all mendacious ,all to no avail. Therefore in June 1987 suit was filed in NYS Supreme Court against the Respondents seeking restitution damages, of $95.600, punitive damages of $250.000, legal fees and other costs. (App) Respondents MM bank now HSBC bank , through house counsel Mr.Scott Miller Esq. in a verified reply under oath ,affirmed by a bank officer (vice pres. Mr. John Trasher) stated that the embezzled and stolen funds are in repose in the accounts in which they were deposited the check for $79.600 is reposing in Summer's " attorney trust account" and the $16.000 in another account .(App) As it is now known by all,- but at the time only by the perpetrators -this was all perjury and lies. MM. bank also impleaded Summer, to have another lying crook and perjurer to back up their deceit. (App) This claim was filed after the Sept. 1, 1986 filing for divorce

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The court, Supreme Court Judge J. Forma ruled (App) that Marine Midland bank is liable to Petitioner, dismissed other extraneous pleas to the court , ordered that the matter at instant of the forgery and theft be determined in a proceeding after the action for divorce is determined , and that in the interest of judicial economy the present matter be transferred to the judge hearing the action for divorce , Supreme Court Justice George Francis.

MR. MILLER LYING TO A SECOND COURT

After the transfer to Justice Francis both Respondents had new fertile ground for lies. to the court. There were several hearings and meetings in chambers with Judge Francis , Petitioner's counsel , Mr. Miller Esq , and Ms. Cheryl Storie Esq. There were shenanigans by Respondents one or the other would be unavailable, one or the other would not agree. to what the others had agreed to. Since Justice Francis was told that the stolen funds were in repose in the respective accounts they were deposited in , he felt that the funds should be transferred into a separate account under the court's control until the divorce is granted and thereafter as per Judge Forma's order the damages should be decided. He did not know how brazenly he was being lied to

In the "Special Term Note of Issue." Justice Francis wrote: "If parties won't settle on this basis then : (1) grant Pepi's motion for s/j as to liability against banks (App) . Of course there was no settlement and after three years of brazen lies and shameless deceitful shenanigans by the outrageously ignoble attorneys for the Respondents -Ms. Storie and Mr. Miller -Judge Francis issued his order.

On March 18, 1991 Judge Francis found Marine Midland Bank , now HSBC Bank, and M&T Bank liable to Petitioner, with damages to be assessed at a trial after the divorce is granted Thereafter, some more shenanigans , alleging that counsel for Petitioner submitted the order for signature late. The lower court did not agree with that , but M.M. and M&T did and they appealed.

MM.'s CONTINUOUS SUBORNING OF PERJURY AND DECEIT

In addition to the perjury by M.M. bank now HSBC Bank , Respondents repeatedly and persistently suborned the perjury and deceit of their racketeering coconspirator Donald Summer presumably relying on the idiom that two liars are better than one. This was disrespectful, outrageous and really unacceptable.

THE FIRST APPEAL

It is no longer material to note what the issues were in the first appeal, because Respondents changed their mendacious tales frequently. The Appeal was obviously frivolous and deceitful ,because anything Respondents had to say in this matter was a lie. On February 5, 1993 Petitioner prevailed in this appeal which as filed on September 16, 1992.(App)

ANOTHER ORDER AFFIRMING PETITIONER'S RIGHTS HOLDING RESPONDENTS LIABLE

On February 22, 1993 , Justice Robert Whelan , substituting for Justice Francis , issued a detailed summary judgment order in this matter (App)

ORDERED: that the Plaintiff's Motion for Summary judgment against the Defendants. Marine Midland Bank N.A. (HSBC Bank USA) and Manufacturers and Traders Trust Company be and the same is hereby granted, and it is further

ORDERED , that a hearing on the assessment of the Plaintiff's damage as claimed in her Complaint , shall be held immediately after the conclusion of an equitable distribution hearing scheduled in an action pending in this court titled Pepi S.. Summer Plaintiff v Donald Summer Defendant.

The rest of the Order denies the consolidation of this matter with the action for divorce sought by all the Defendants. Signed, Robert E Whelan ,Justice of the Supreme Court.

ANOTHER MAJOR SCAM AND FRAUD ON THE COURT BY RESPONDENTS

After a 12 day trial in September and November 1992 a judgment of divorce was finally granted on March 17, 1993. Justice Francis who was to conduct the divorce trial was busy, so a JHO, Judge H.B. Roberts was appointed to do so. His assignment : the trial only. He had no knowledge of the "bank claim" and the attorneys were enjoined by the order of the court to mention it. The court made a finding that Summer co mingled his attorney trust account with personal funds using it all as his piggy bank, therefore petitioner is entitled to 50% of the amount of money in the account as of the day the action was filed, September 1, 1986.(App)

This was appealed by Summer, but nothing changed .After the appeal Summer and respondents M.M. Bank now HSBC Bank , Mr. Scott Miller Esq. and M&T bank and Ms. Storie Esq continued the predicate acts of racketeering and filed motions for a hearing to close this embezzlement case, alleging that since petitioner was awarded 50% of the so called attorney trust account as well as other accounts , and since these accounts held the stolen checks, petitioner has been compensated. They filed serially perjured affidavits alleging that the funds were there in the accounts .(App)

There was a new judge Supreme Court Justice Joslin, and petitioner was in the courtroom at this proceeding. Mr. Miller told so many lies about the case, about other judges about what has been done, that JHO Roberts had already adjudicated this matter. There are about 5 pages of transcript from that hearing, that should suffice to remove Mr.Miller Esq. from ever being an attorney. Between these ignoble pathological liars of Summer and Miller ,they bamboozled the court , and Judge Joslin dismissed petitioner's claim because JHO Roberts had already decided this matter and distributed the accounts in which held these funds (App)This despite the best efforts by petitioner's counsel. Three liars and perjurers and crooks presenting the same fraud and deceit at the same time persuaded the court.

THE SECOND APPEAL, AND PETITIONER PREVAILED AGAIN

Petitioner appealed Judge Joslin's decision and prevailed again in a reported decision dated May 31, 1996 *Summer v Marine Midland Bank 227 AD 2nd , 932 643 NYS2D256* (App)
In the decisional sentences the court said that the lower court erred in dismissing the claim. Thereafter the court 's decision is slightly muddled in it's holding stating that since the divorce court held that petitioner is entitled to 50% of the accounts in which the stolen funds have been deposited-the court did not yet know that the stolen funds have been laundered only, therefore Petitioner is entitled to 50% of the converted sum.(4). The Court further held that Petitioner's damages are to be assessed by the court, and that the lower court should be mindful in it's decision of the time elapsed : at the time it was eleven years. The case was returned to Judge Joslin.

This decision has remained the law of the case until the recent dismissal, although there had been another appeal in between, possibly even two. Petitioner prevailed. This decision makes the recent dismissal appear much more twisted and perverted ,based on favoritism , more biased , retaliatory and punitive , for publicly disclosing the "secret life" of these fiduciary institutions, HSBC Bank USA , and M&T and their representatives that enjoy iconic status in Buffalo , New York.

(4) When the cash funds were removed from Merrill Lynch, there remained in the account of securities worth $5.600. When the action for divorce was filed this remainder account was frozen to await further disposition. JHO Roberts was asked to adjudicate all the issues between parties , and there was this Merrill Lynch account which had grown to $51.200. Since the parties and their lawyers were enjoined from mentioning anything about this account or the "bank claim", the court placed the account in the 50/50 split column. The Appellate Division acknowledged in it's decision that the Merrill Lynch matter could not be brought up in the divorce trial because of the orders by the court, but at the same time assigned judicial fact based finding and value to the court splitting the remainder of this account 50/50.Therefore when the court said that the Marine Midland account was valued 50/50 and likewise the remainder Merrill Lynch account, therefore petitioner's entitlement is limited to 50% of the stolen money.

RESPONDENTS FURTHER SHENANIGANS
THE PATH TO ANOTHER APPEAL

Post reinstatement of the claim , counsel for petitioner and Justice Joslin sought to bring this matter to a conclusion but to no avail. The exploitative, perjurious, corrupt ,mindless legal gyrations continued, and at one point respondent M.M. and counsel Mr. Scot Miller Esq.. demanded that Petitioner submit to a deposition by Summer.. Summer was not a party to the proceedings, nor a party in interest and the court issued a protective order.. Respondent M.M.and counsel Mr. Miller Esq objected to the protective order, and appealed.

APPEAL NUMBER THREE
PETITIONER PREVAILED AGAIN

Petitioner had left New York State in 1995 for Bethesda, Maryland and after a few years for the San Francisco Bay area. of California. Petitioner's counsel had filed a motion on October 7,1997 to dismiss this appeal as being frivolous and on April 6, 1998 the Appellate Div. dismissed . for that reason While petitioner does not have evidence in her records , but believes that Respondent MM now HSBC Bank had appealed this issue again which appeal succumbed due to neglect.

Additional fraudulent , deceptive legal gyrations by respondents were followed by several changes. Marine Midland bank was taken over by HSBC bank, petitioner finished law school and took over her legal representation., and Justice Joslin retired. The replacement judge had a conflict with respondents, hence a default choice was Justice Patrick NeMoyer , a long time political figure and office holder in the Buffalo area , who had been the financial officer for the city or the county among other who was either elected or appointed to the court. .He was as displeased with this assignment as Petitioner. He had long term ties to the Respondents and certainly did not want to rule against them. while Petitioner was concerned that he would be biased in their favor, and therefore Petitioner would be severely disadvantaged. .Judge NeMoyer demanded a personal appearance by Petitioner-no teleconferencing- to ask some questions- primarily why him for this old case.

MOURADIAN V ASTORIA FED. SAV.& LOAN
689 N.E. 2nd 1385 (1997)
New York Court of Appeals

The law of the case in the instant matter was determined by the Appellate Decision dated May 31 , 1996. However a case very much on point with the instant one was decided by the New York Court of Appeals on December 17, 1997 which is applicable to the instant one, and superseeds the previously held law of the case. The Court of Appeals held::

" Payee of jointly payable checks brought conversion action to recover face amount of checks after payee's estranged husband forged her name. Payee moved for summary judgment. The Supreme Court , Nassau County , Alpert , J. entered judgment for payee, and bank appealed. The Supreme Court , Appellate Division , 236 A.D. 2d 451, affirmed and drawee bank appealed. The Court of Appeals , Ciparick , J held that while drawee may claim setoff for funds actually received by payee, rule of absolute liability precludes further inquiry into whether payee who has not recovered any of the funds , in fact benefitted from proceeds of the checks. UCC3-419(2) Rule of absolute liability precludes further inquiry into whether the payee who has nor recovered the funds , in fact benefitted from the proceeds. Affirmed."

The fact pattern of *Mouradian* is that the estranged husband of the Plaintiff forged her signature on three joint name insurance checks in amount of $37,890.60 payment for fire damage at their jointly owned home, and he claimed he used it for home repairs from whicl his wife benefited as well. The court took notice that Plaintiff had n control over the funds, or the work performed. The court also noted that "the rule of absolute liability does not prevent a settoff where a party is put in an as good positions as before the embezzlement, but this was not possible because the funds were gone".

This holding is applicable to the matter at instant: Respondents had numerous perjured statements such as "the stolen funds are her there, Petitioner has received them through her credit card,20 years ago, through marital maintenance, and other. The current dismissal is based on such outrageous lies by Respondents.

THE LOWER COURT PLEADINGS
SUMMARY JUDGMENT

Before proceeding in state court, petitioner attempted to remove the case to Federal Court, an act highly desirable but procedurally not sustainable All that was remaining in the instant matter was summary judgment , damages ,fees and interest Petitioner filed several pleadings to Judge NeMoyer ,which were all denied. One pleading pointed out that *Mouradian* is 100 % applicable in the present matter because of factual and procedural reasons it is now stare decisis. Had all the lies , the fraud and serial perjury by Mr. Miller Esq, that he presented to the courts leading to the Appellate decision of May 31, 1996 been true , the Appellate Court was still deceived in awarding Petitioner only 50% of her money due her, because she had received 50% credit for those accounts. Judge NeMoyer disagreed , and said "look you are going to receive the minimum $47.600 as per the appellate decision of May 31, 1996 , and that is all for you"

On October 10, 2003 Petitioner filed a motion for summary judgment , which was amended on November 1, 2003 in which petitioner sought the full amount of the embezzled and stolen funds, $95.600, punitive damages, legal fees . HSBC Bank USA requested and of course was immediately granted a seven month adjournment, "to find a defense" which is quite bizarre , and despite Petitioners objections. It was a foregone conclusion that they would be granted any request they made .Judge NeMoyer ignored Petitioner's suggestion that the HSBC employ the defense that Marine Midland was going to use on November 7, 1985 when the funds were embezzled

On December 26, 2003 in response to a routine discovery request , through the documents provided, Petitioner learned that all the 18 years of proceedings in this matter have been a farce, fraud , deceit, shameless lies, predatory and disrespectful exploitation of the courts and judicial system, predatory , scummy criminal and malignant exploitation of this Petitioner , fraudulent exploitation of the seven law firms that had represented her, engaging in RICO activities , and prostituting the legal profession, because the records indicate (App) that the stolen checks were laundered at MM bank and removed for parts unknown 13 days after deposit..

It is disturbing to note that someone who is so dishonest, so lacking in morals and ethics , so disrespectful of law, the legal profession, and the legal institutions, like Mr Miller Esq. whose job should really be a prison cell, is chief legal counsel for a fiduciary institution. Do they know ?

When the court gave respondent HSBC bank an additional seven month to find a defense, he knew with 100% certainty that no meritorious defense was possible. After Dec 26, 2003 Judge NeMoyer had been notified that the stolen funds had in fact been "laundered"at Marine Midland bank and immediately removed for parts unknown. Therefore , the 19 years of racketeering , judicial exploitation and lying were a crime. Therefore the court also knew knew that for any new defense they would have to rearrange the old crimes. But it appears that Judge NeMoyer did not want to be known as the one who would deny any request HSBC and the law firm that represents them.. Petitioner filed a motion for Judge NeMoyer to recuse(App) because of his bias and long term ties to Respondents. HSBC 's counsel urged him not to. This was highly improper for the beneficiary of the favoritism that the Judge is accused of. to intervene, as the Judge is an adult who is able to represent himself .Nevertheless citing this advise-hence no recusal.

On May 18, 2004 the court announced that petitioner would be granted summary judgment consistent with the order of May 31, 1996 providing 50% of the original sum stolen and the statutory interest .(App) The other was all denied. . Respondent HSBC who had intertwined several brazen lies and extensive serial perjury -they knowingly presented perjured and false statements which an attorney is not permitted to do - by which fraudulent perverted presentation , Petitioner had already been overcompensated. and unjustly enriched. . The court was very pleased, and told counsel that he agreed with that .position Counsel urged the court to dismiss Petitioner's motion . When the court explained hat he would like to , but is bound by the appellate order, counsel replied " you do not have to take this so literal" (App) An extremely uncommon occurrence in which an attorney feels free to tell a Judge that he does not have to comply with an order from a higher court .. The power of contemptible arrogance in those favored by bias. is never ending
Petitioner was granted summary judgment. (App)

THE APPEALS

Respondents appealed the judgment awarded Petitioner, and Petitioner cross appealed the award because it was only 50% of the stolen funds. Petitioner timely amended her cross appeal appealed the denial of damages, denial of legal costs, denial of punitive damages, and the denial of compounded interest, also moving to consolidate all these appeals. The Appellate Division denied all of Petitioner's (6) appeals , except the cross appeal to Respondent's appeal. (App) This Court requires a joint record on appeal which is certified by the lower court. There is no rule which party prepares the record: it is by agreement or the court makes the decision. The court decided that Respondent HSBC should prepare the record, and counsel decided the content of he record as well. This act by itself could not obscure the facts and the law of the case: Respondents embezzled and converted Petitioner's funds in a racketeering conspiracy scheme and for more than 19 years had engaged in every kind of criminal misconduct and exploitation of persons and institutions imaginable ,causing significant harm , all to deny Petitioner her funds .The record was filed at Respondents pleasure, and oral argument was delayed for seven month because counsel for HSBC was on holiday. Respondents prevailed (7). (App). Court of Appeals refused review, which is surprising in light of *Mouradian.* (App)

(6)) While at first petitioner was surprised by that , but upon further reflection the court had signaled it's new found loyalties, which were not in the law or the Constitution. There are new people n the court. During oral argument she recognized two men who had ties to Respondents . In the 7 month of the search for a defense , HSBC sought to examine Petitioner's divorce records and the appellate records to same, all of which is none of their business. Petitioner objected, but to no avail. Vis-a-vis HSBC and their law firm there are no privacy rights. Yet, when petitioner found out of the extensive fraud perpetrated on all the courts ,the appellate division included Petitioner filed a pleading , pointing out to the court the massive fraud and deceit by Respondents , and sought reconsideration. This was obviously out of time, but the expectation was that they would deny and say so. But it was different: the : court denied, but did not like the message therefore fined Petitioner $100.

(7) Counsel is part of a large law firm, others could have taken his place. As is this all appears prearranged. Counsel had only spoken for 2 min. and was stopped told by the chief judge "we know., yes ok" What did he know? Much more talkative with petitioner.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE SUPREMACY CLAUSE: ARTICLE VI, SEC.2 OF THE UNITED STATES CONSTITUTION

(a) The instant case is Federal in nature albeit pursued in State court, and it was wrongfully vacated

" The Constitution and the laws of the United States shall be binding on the States."*Art VI (2).* While the instant claim against the rogue banks has been pursued in state courts which vacated without cause, national banks are instrumentalities of the Federal Government and Congress. *Mercantile Nat. Bank v. Langdeau , 371 U.S. 555 (1963).*The respondents are fiduciary institutions chartered by the Federal Govt..are subject to the Rules of U.C.C. and the U.S. Dept. of Treasury. Therefore it was wrongly vacated. .

(b) This Court is the appropriate venue to review this matter.

The right to seek certiorari in this Court to review a state court judgment "is not granted by any State , and exists by virtue of federal statute *(28 U.S.C. #1257)* with or without the consent of the State whose judgment is sought to be reviewed " *Ross v Moffitt, 417 U.S. 600 (1974)* . As stated by Justice Brennan:

> "Crucial to the exercise of our certiorari jurisdiction is whether the issue in the state court case is federal , arising under the United States Constitution or under federal laws."

This Court extends it's Appellate Jurisdiction over state matters only subsequent to the exhaustion of state remedies as is the case in the present matter.

(c) Pursuant to the Rocker-Feldman Doctrine, this is the only Court to review, and correct the error.

Under the Rocker -Feldman Doctrine ,*Rocker v Fidelity Trust Co. 263 U.S. 413 (1923)* this Court held that under the legislation of Congress no court of the United States other than this Court could entertain a proceeding to reverse or modify a state court judgment for errors federal in character. In *Smith v Philips 455 U.S. 209, (1982)* this Court held that the main point of *Rocker-Feldman* is that the Court holds no supervisory power over state judicial proceedings , it may intervene only to correct wrongs of constitutional dimensions. The instant matter is thus.

II. THE UNIFORM COMMERCIAL CODE
UCC CONVERSION

Pursuant to UCC # 3-419 (1) an instrument is converted when:

(a) It is paid on a forged endorsement .A missing endorsement is the equivalent of a forged endorsement for the purpose of a UCC # 3-419 conversion suit. *Massachussets General Motors Acc. Corp. v Abbington Cas. Ins. Co 602 NE2nd 1085 (1992)* When a bank pays paper even though an endorsement is missing , the effect is the same as payment on a forged endorsement. Thus the bank commits conversion of the paper. *U.S. Commonwealth Fed. Sav. &Loan Ass'n v First Natl. Bank . 513 F. Supp 296(1979)* The Appellate Div, 4th Dept which vacated Petitioner's judgment did so by violating it's own precedents in the instant matter having affirmed the claim in at least three appellate decisions, but also another completely on point *Costello v Oneida Natl. Bank & Trust Co 485 NE2d , 239 (1985 4th Dept.)*

DAMAGES

(2) In an action against a drawee for conversion , the measure of the drawee's lability is the face amount of the instrument. Special damages, that is, those damages which arise from the special circumstances of the case and which, may be added to the general damages legally presumed or implied from the mere invasion of the Petitioner's rights, . *NY Jur. 2d Damages (1st ed #12)* may be recovered in an action for conversion..*Bennett v Lockwood , 20 Wend, 223.* Thus compensation for time and money spent in pursuit of the property converted, including attorney's fees, if they are the natural and proximate consequence of the Respondent's act of conversion may be recovered.*Bennett v Lockwood , 20 Wend 223, McDonald v North , 47 Barb 530. P*unitive or exemplary damages may be recovered for the conversion , where the circumstances show that the conversion was accompanied by malice, insult reckless and wilful disregard of the petitioner's rights, or other proof showing the aggraved nature of the act. *Ashare v Mirkin, Barre , Saltzstein & Gordon, P.C. , 435 NY2d 438 (1980) Schaffner v Pierce, 347 NY2d, 411 (1973), Bankers Trust Co v Island Discount Corp. 158 NYSd 715, (1956).*

(3) AWARDING PUNITIVE DAMAGES

The purpose of an award of such damages is not only to compensate for harm suffered by the plaintiff(petitioner) but to reflect punishment of the wrongdoer for the past event and to deter a tortfeasor from a repetition of the wrongful act. *Manekas v Allied Discount Co.166 NYS 2d 366 (1957)* This Court has held that punitive damages serve the same purpose as criminal penalties. *State Farm Mutual In. v Campbell 155 L.. Ed 2d 585 (2003).*In *BMW of North America Inc v. Gore 517 U.S. 559,* this Court upheld a punitive damage award of $2.000.000 on an $4.000 compensatory damage award. If punitive damages are sought for wanton and willful acts , the demand should be made in the complaint. *Rock v Belmar Contracting Co. 252 NYS 463 (1930)* . Petitioner did seek $250.000 in punitive damages, and after 20 years sought to increase that demand pursuant to the statistics of the CPI-Consumer Price Index, as provided by the United States Department of Labor Statistics, but the lower court rejected any attempt at that. There can hardly be a more meritorious and deserving litigant for a punitive damages awardthan Petitioner, nor more suitable candidates for the payment of punitive damages, than Respondents.

III. ARTICLE I, SEC. (8) of the CONSTITUTION RESPONDENT'S MISDEEDS AND THE COMMERCE CLAUSE

The matter at instant is an absolute offense and affront against interstate and intrastate commerce, and the above noted article of the United States Constitution. In *Lopez, United States v Lopez, 514 U.S.549 (1995)* this Court held that the possession of firearms in school zones , even in the aggregate are too peripheral to affect interstate commerce and for Congress to regulate them pursuant to the Commerce Clause. But the Present matter involving two banks , two rogue banks which are institutions regulated by the Federal Government possess

the necessary elements to affect interstate commerce. and commerce within the states. Respondent banks are national in character. In *Fargo National Bank v Massey -Ferguson , In. 400 F 2nd 223(1968), R.Mars , Contract Co v Massanutten Bank of Strasburg, 285 F 2nd 158 (1960)* and cases from many other jurisdictions, the courts have held that the banks are liable for the conversion of forged instruments , but also in tort for being negligent in not examining the forged instruments offered for negotiation.

" A bank holding out it's officers and employees as worthy of confidence should not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment , nor will it be permitted to shirk it's responsibility for such frauds, even though no benefit may accrue to the bank therefrom Accordingly , the general rule is that a bank is liable for the fraudulent acts or representations of an officer or employee acting within the course and apparent scope of .his employment or authority. *Fishkill Sav. Institution v National Bank of Fishkill , 80 NY 163, (1880) 10 Am. Jur. 2d, Banks # 111.* If a bank officer in the apparent scope of his duties makes false and fraudulent assertions in reliance upon which a person acts to his injury , the bank is responsible therefore. *Carr v National Bank & Loan Co, 189 U.S. 426 (1901).*

The matter at instant that has offended the commerce clause, through rogue banks, and corrupt ,lying , crooks as employees and as officers also has all the elements for *Fishkill* and *Carr.*

(2) ASSESSING FEES FOR BAD FAITH CONDUCT CHAMBERS v NASCO INC.

When Petitioner filed her complaint she asked the Court for the legal costs of this proceeding. Through 20 years of litigation the legal fees paid by Petitioner to seven attorneys and their firms , have amounted to $65.000 -their names to be listed in the App. and all the Judges that had been involved in the present matter. This large amount of money for legal fees , does not include the costs of the self representation: such as about eight round trips from Northern California to New York State., and ancillary fees.

Chambers v Nasco, 501 U.S. 32(1990), is on point to the present matter .Justice White began stating his decision by saying that "the case started out as a simple action for specific performance of a contract, but it did not remain so."The same language is applicable to the matter at instant . When petitioner learned that her funds had been stolen and deposited at MM bank, and while she knew that this bank was considered a "dirty " bank involved in nefarious endeavors with criminals, she did not expect the depth of criminality and deceit by Mr. Scott Miller Esq.counsel for MM bank , now HSBC bank,and the other ignominious people and institutions involved. The language used by the District Court describing Mr. Chambers and his activities :" part of a sordid scheme of deliberate misuse of the judicial system" is 100% applicable to the present matter, with the addition of the arrogant exploitation of the judiciary: "mendacity and deceit" as sport. In the 20 years since the embezzlement , there is not a single pleading that is not serial perjury by Mr. Miller Esq. or lies and fraud. Current counsel has repackaged the lies and the perjury, for reuse. Petitioner strongly believes that Mr. Miller Esq. should be disbarred or suspended for awhile , as he brings shame and sordid criminality to the profession, and offends. It is not likely however, that in Buffalo NY someone will take the appropriate action against him, as retaliation could be career harming. While Mr. Miller Esq.'s conduct as well as his employer's meet all the requirements of criminal fraud and RICO prosecution, it is unfortunately too late for same NY State does not have extended time tolling statutes for prosecution of civil crimes.

M&T bank, MM Bank's now HSBC Bank's "sordid scheme of deliberate misuse of the judicial system"(*Chambers)*has intentionally and maliciously deprived Petitioner of a significant amount of money that had been needed over the years. At the time of the embezzlement and conversion , the $95.600 stolen were invested generating $11.500 per year, and the corpus of the investment would have tripled in a few years. Therefore Petitioner prays for a Writ of Certiorari which could lead to holding the malfeasants accountable.

IV PETITIONER WAS DENIED PROCEDURAL DUE PROCESS AND EQUAL PROTECTION

—— Petitioner's property interest in her converted funds and her damages have never been subject to a due process evidentiary proceeding because she has prevailed in the lower and appellate courts through summary judgment., which was also the order by which Petitioner's right to her property has been dismissed. In *Board of Regents v Roth , 408 U.S. 564, 1972.* this Court -Justice White held that a sufficient property interest requires a hearing before dismissal. While property interests are not created by the Constitution , but rather from independent sources such as law. or government agencies. Petitioner's absolute entitlement to her funds comes from law , the U.C.C. and from the courts. In *Goldberg v Kelly 397 U.S. 254 (1970)* the Court held that a due process proceeding, an opportunity to be heard must be provided. The Court also cited the grievous loss that the Goldberg's would suffer by losing benefits that ensure their survival. While Petitioner's loss is not comparable to the Goldberg's in it's effect on life, Petitioner's deprivation of the funds, and the extensive losses and fees are significant. In *Perry v Sinderman , 408 U.S. 593 (1972)* , in a different set of facts the Court also mandated an entitlement to a due process proceeding.

In *Bush v Gore 531U.S.98 (2000)* this Court held that under the Federal Constitution's Fourteenth Amendment the rudimentary requirements of due process and equal treatment, which is really fundamental fairness must be satisfied.

Until the dismissal without due process, petitioner's equal protection rights were largely impaired by the lies, fraud and serial perjury by Mr. Miller Esq. and MM Bank, now HSBC Bank, and M&T bank.

However the dismissal by the Appellate court is a brazen and outrageous exercise of due process and equal protection violations, all to benefit the friendships and cronyism, of the Respondents , local law firm and institutions . The lies presented are outrageous. The dismissal on a perjured brief almost appears prearranged and mindless.

V. THE DISMISSAL WAS IN ERROR , IS IRRATIONAL IS CONSTITUTIONALLY INFIRM, VIOLATES THE 14 AMENDMENT, CIVIL PROCEDURE, AND IS BASED ON A BREW OF SERIAL PERJURY, LIES DECEIT AND JUDICIAL BIAS

(1) Summary judgement is abridged adjudication , therefore can be in conflict with due process requirements.

The present matter has been repeatedly adjudicated through the process of summary judgment .This Court has held that summary judgment is appropriate when the moving party is entitled to same as a matter of law. *Cellotex Corp. v Catrett, 477 U.S. 317 (1986)* But in granting summary judgment each time , no full due process proceeding has taken place. The 14th Ammednment Sect 1 holds that "no person shall be deprived of life, property or liberty without due process of law" In *Goldberg v Kelly 397 U.S. 254 (1970) this* Court has defined due process as an evidentiary proceeding , especially where there is an existing legal entitlement. In Goldberg it was government benefits, in the present matter it is the Rules of law of the Uniform Commercial Code .Therefore this dismisal is unconstitutional, and the Appellate Division of NY State Supreme Court that has adjudicated four appeals in this matter , recognizes the due process 14th Amendment requirements. .Petitioner is entitled to a due process evidentiary proceeding. The dismissal violated her Constitutional rights,

(2) The dismissal was based on fraud , serial perjury and lies stitched together by HSBC Bank USA that have been previously disregarded.

In the false oral presentations and perjured pleadings by Mr. Scott Miller Esq.in which he so shamelessly deceived the court in the May 31, 1996 appeal by insisting that this matter had been adjudicated in the marital dissolution, that these stolen funds had remained in the accounts for the marital distribution in which Petitioner was compensated .In the reported decision, the Court held that if the marital split was 50/50, and the funds had remained in those accounts to be distributed , than Petitioner had been partially compensated , therefore she is entitled to an additional 50% of the stolen funds and other (App)

With full knowledge that what they were offering is false, fraudulent and perjured , HSBC's counsel appearing no more honorable than Mr. Miller Esq. asserted that Petitioner is only entitled to $47 .800 . Thereafter Respondents took the two checks that Petitioner had written on January 13, 1986: one on her credit card account for $10.000 (see pg 5 of this petition for details)and the other from the marital account written on that day for household expenses (pg 5) for $22.000 ,copied and inserted it twice making that check $44.000 and concluded that petitioner had received $54.000 and therefore has been overcompensated, because she was only entitled to $47.800.

The Appellate Division agreed with that bizarre, mindless scenario, and after 20 years dismissed Petitioner's claim..

(3) Even in a court that loves them , Respondent's claim is res judicata , has been for almost 20 years and they were collaterally estopped from using this defense

In June 1987 when Petitioner filed suit against Respondents Marine Midland and M&T bank, they impleaded D. Summer as a third party Defendant.(App) While he never said that the funds at Merrill Lynch were his or even marital , because Petitioner had the.evidence to prove the facts. But in his defense he used the same story as Respondents did in this appeal Judge Forma in his decision of March 1988, (App) dismissed that claim, held Marine Midland liable to Petitioner, and transferred the matter to Judge Francis. No additional order by a lower court has ever revisited this claim by Summer again. In the previous appeals the Appellate Division had the old claim before it, and never revisited or affirmed it . They revisited it now because they needed any excuse to rule in favor of Respondent. This is quite troubling and pathetic.

(4) Bias and Retaliation

The dismissal of this matter at this stage of the proceedings after 20 years of litigation and proceedings , after several lower court orders favoring Petitioner, and three (possibly four) orders by this Appellate Court, when there is nothing new, in facts or

in law, than one has to conclude that it is on the wish list of the court to favor the Respondents at the expense of the Petitioner. perhaps more accurately stated is : to reward the Respondents and punish the Petitioner. This is a gross violation of their judicial oath , abuse of power , abuse of discretion and works incalculable injury to the rights of individuals and to the government institutions affirming those rights. In *Tumey v Ohio ,273 U.S. 510 (1927)* this Court has held that:" it has been our holding for more than half a century that everyone is entitled to an unbiased court. "

The Appellate Div. had exhibited multi layered bias against Petitioner in matters leading up to this decision along with a desire and intent to punish her in retaliation for disclosing the truth of the Respondent banks being rogues, and that officers and employees of Respondents banks, especially Marine Midland bank, now HSBC bank and Mr.. Miller Esq. are corrupt, are liars and serial perjurers. Mr. Miller Esq. is a common crook and gangster who has obviously exploited Petitioner and caused her harm, but also exploited the Judicial system. through incredible lies and deceit. He is not fit to be associated with a fiduciary institution, deserves a repose from his license to practice law, and some time in a prison. The court knew the veracity of this , just did not want it mentioned ..

In proceedings leading up to this decision the Appellate Court had signaled that Respondents would prevail: but the brazenness of actually doing so is a surprise. The Western NY legal -judicial - banking community is intertwined ,especially the older established ones, they all know and depend on each other, protect each other, and being against one of the iconic banks in town could be very career damaging. The facile manner in which the Appellate Div has accepted the false ,perjured and fraudulent deprecation of the facts and law in the present matter as presented by Respondents , despite their having the facts in front of them which they have had for many years, is very troubling, yet is indicative of these long term ties and mutual support. The court knows who the crooks are they just took exception to Petitioner spreading it. .The Appellate Division was thoroughly familiar with the facts and the law, they just forgot the Constitution and the Bill of Rights their oath, their duty, their ethics and their morals.

(5) Gender bias and lococentrism

There is an impermissible element of gender bias and loco centrism or regionalism in the dismissal of this claim. Petitioner, a woman from 3000 miles away , challenging the mostly male establishments of the banks, the appellate court and of the home town "folk" was not considered important for due process and equal protection entitlements It is incontrovertibly evident that the United States Constitution was of no import or consideration in this decision at instant.

(6) The public interest

There are several elements in this dismissal that are injurious to the public interest. Banks are federally chartered fiduciary institutions whose integrity being mandated, is therefore assumed and the public relies and depends on it. Petitioner relied on them as well. Petitioner had a right to expect the requisite integrity leve from Respondents Marine Midland Bank , now HSBC Bank USA and M&T. Bank They are rogue , deviant institutions that are a threat to the public interest and well being. These malfeasants mus be held accountable for their past corrupt misconduct, and harm to Petitioner. For 20 years Petitioner has been deprived of her money the income this invested money generated ,all of which was sorely needed. Additionally Petitioner had to spend large sums of money for legal fees, to salvage her assets from perfidious .miscreants.

(7) The interest of Justice.

Alongside the public interest is the interest in justice. In *Gondek v Pan American World Airways, 370 U.S. 918, 371 U.S. (1962), 382 U.S. 25 (1965)* , this Court applied a standard of "the interests of justice" to revisit previously denied relief. Justice demands attention, and in the present matter , justice having been previously denied, intentionally but through the malfeasance of Respondents. Petitioner is praying for justice.

CONCLUSION

The decision below conflicts with this Court's precedents , with Constitutional mandates , with the Rules of the Uniform Commercial Code, with the Federal Banking Laws, with the Rules of Civil Procedure as well as the precedents of the same court below. This case functions at an intersection of a State decision about Federal Institutions subject to federal and state laws.

Without this Court's intervention through a Writ of Certiorari Petitioner having exhausted all the available venues to pursue, has no further remaining opportunities , effectively nowhere to turn to seek restitution and damages , to receive what has been taken from her more than 20 years ago, and she will remain forever deprived.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

April 29, 2006

Pepi Schafler, BA, MSSS, JD, PhD

Supreme Court, U.S.
FILED

(3)

051494 MAY 9 - 2006

No: 06-1313

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Pepi Schaffler, BA, MSSS, JD PhD
Petitioner
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743

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Bank statement Marine Midland bank now HSBC evidencing the deposit on November 8 , 1985 of check in amount of $79,200 without petitioner's endorsement , and laundering it and removing it on November 25, 1985, something unknown for 18 years. — 13

Embezzled, converted forged and laundered check in amount of $16,000 of petitioner's money dated November 7, 1985 — 14

Bank statement Marine Midland bank now HSBC evidencing the deposit on November 8, 1985 of check in amount of $16.000 without Petitioner's endorsement , and laundering it and removing it on November 25 1985, something unknown for 18 years. — 15

HSBC USA's compliance letter with demand to produce documents ,dated December 22, 2003 providing bank statements that evidenced he embezzled , stolen and forged checks were days within days after the theft despite 18 years of lies and serial perjury by Respondents falsely claiming -under oath-that the money is here there waiting, while they make another perjured motion. — 16

Merrill Lynch, et al statement of account from where these funds were stolen , dated November 29, 1985 reflecting the fact that the account had $116,159 in the prior month, now the remainder $12. 684 17
Goldome Bank petitioner's CD in amount of $101.127 maturing 10.10 86. Letter from bank dated Nov 22, 1985 to Donald Summer who had attempted tom steal these funds as well, explaining the futility of that attempt, because it could never succeed. 18
Power of attorney from Donald Summer to Pepi Summer dated December 20, 1984, on two marital accounts, one being a joint credit card account with cards in separate names that also had credit (loan) checks. 19
Letter to Comptroller of Currency and copy to the pres. of Marine Midland bank dated November 25, 1986 describing Marine's failure to honor a valid power of attorney they were covering up their tawdry misconduct. The pres of marine did not act. 20
List of the legal participants in this matter including all the judges and attorneys, in their order of service the list is sizeable. 21
First letter contact by petitioner's counsel dated January 23,1986 with those that embezzled and stole her money, asking for the return of same. 22
Report January 22, 1986 of petitioner's meeting on that day with a Vice Pres. Mr. John Trasher of MM bank, who proved to be the designated liar. 23
Summons and complaint filed on June 12, 1987 starting a legal action against Respondents ,and at the time including Merrill Lynch et al, stating the causes of actions, the damages sought. 24
Marine Midland Banks verified answer with cross claim , in which Mr. Scott Miller Esq. under oath states that the forged check and the stolen funds are are reposing in Donald Summer's attorney trust account. dated July 7, 1987 because of banking rules a bank office has to sign counsel's statement under oath. Mr. Trasher the designated liar does so. 26

M & T bank' Response and cross claim, July 16, 1987 27
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Affirmation Manufacturers & Traders Trust Co dated Nov 8, 1994, under oath joining MM seeking the same relief. 35
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NYS Supreme Ct Affirmation under oath by Nelson Zakia Esq. dated Ocvtober 21, 1994 38
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State of New York , Organized Crime Task 46
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dated may 3, 1989 , documents to bring :
Re Nouveau Constr. among other
Letter Marine Midland legal dept 46
dated April 15, 1992, accompanying
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In Re: Donald Summer's suspension from the 47
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Indictment , K. Barone dated January 14, 1988
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plea K. Barone received a 3year to life prison sentence.
Marital property rights difeferentiated from common 50
law property rights.

STATE OF NEW YORK
COURT OF APPEALS

Decision February 14, 2006

Mo No: 1313
Pepi Schafler (Summer }
Appellant
v
HSBC Bank USA et al
Respondents

Motion for leave to appeal denied.

Signed, Stuart Cohen, Clerk of the Court

COURT OF APPEALS
STATE OF NEW YORK

Pepi Schafler (Summer) — Erie County
Plaintiff-Appellant-Crossappellant — Supreme Court
v — Index : H-94139/87
HSBC USA (Marine Midland bank)
Manufacturers and Traders Trust Co
Defendants-Appellants-Respondents

Notice of Motion
Motion for leave to Appeal to this Court,
pursuant to CPLR # 5602(a)
Jurisdiction

This Court has jurisdiction in this matter as it is from a final decision by the Appellate Division Fourth Dept. dated November 10, 2005. AS the highest Court in the State this Court also has jurisdiction to review all proceedings de novo.

Dated: November 25, 2005
Signed: Pepi Schafler, BA, MSSS, JD, PhD

Questions presented for review:
1. Did Pepi Schafler have $95.200 of her personal funds stolen on Nov 8. 1985 , by prearrangement in a money laundering racketeering conspiracy scheme of uncommon deceit , that included a former spouse Donald Summer , fiduciary institutions M&T bank , Marine Midland bank now HSBC USA bank, and facilitated by their counsel the primary malfeasant ,an uncommon serial perjurer and crook, Mr. Scott Miller Esq. who for about 18 years of representation was the pivot of this racketeering scheme , who brazenly deceived the lower courts, at least six judges ,lied and swindled his way through four appeals .NY State has no tolling statute for Mr. Miller Esq's crimes , consequently remedies can only be civil, therefore is Plaintiff-Appellant-Petitioner entitled to restitution of the stolen $95.200, compounded interest, $65.000 in legal costs paid to seven lawyers and law firms , Petitioner's travel expense for seven roundtrips from Northern California to Buffalo NY, and punitive damages for depriving Petitioner of he funds for 20 years when theses funds were needed ?

2. Is the decision by the Appellate Division of November 10, 2005 dismissing Petitioner's claim anything other than, biased, frivolous heedless , judicially erroneous and escapist?
3. Is the matter at instant on point with *Mauridian* ,differing only by the criminal conduct involved?

Statement of the case.

To avoid wasteful redundancy, Petitioner is totally omitting these pages, as they are included in the Petition for Certiorari.

Argument

The issues in the instant matter is 100% on point with the issues decided by this court in *Mauridian v Astoria Sav &Loan , 689 N.E.2nd 1385 (NY 1987)* in which this Court held that under the UCC. 3-419 strict liability rule , requires full restitution of a converted instrument. The only difference in the instant matter and Mauradian is that the uncommon depraved mendacity by MM bank now HSBC USA and their counsel Mr. Scott Miller Esq who has deceived and exploited everyone he could and played theater with the facts, the law and the courts and did so for 18 years.

All the previous judicial decisions including the Appellate ones have granted Petitioner Summary judgment holding Marine Midland liable.to Petitioner-Plaintiff. Recently and unexpectedly Petitioner has encountered and been overrun by a local culture of bias and favoritism , disrespecting her standing and violating her rights to due process and equal protection. HSBC USA and Phillips Lytle rule.The lower court Justice NeMoyer for decades a political figure , who recently made it to the court with strong ties to the Respondents knew nothing about the case ,relying on the Respondent HSBC USA counsel to tell him what he needs to know so he can be on their side. he was. His biased conduct was manifest and evident. He was asked by Petitioner to recuse, but counsel for HSBC asked him to stay. So he stayed. Petitioner believes that this dismissal was punitive to punish her for calling this degenerate liar, counsel for Marine Midland -now HSBC, Mr. Miller Esq, a crook and liar, both of which he is. It appears that the court was not angry at him being one, just that Petitioner spoke of him being one. Petitioner hereby asks this Court for permission to Appeal, and therefore there will be de novo review.

Signed , Dr. Pepi Schafler.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division Fourth Judicial Department

Pepi Schafler (Summer)
Plaintiff-Respondent — Order CA 05-00463
v — 05-00464
HSBC Bank USA (Marine Midland) — 05-00465
M&T Bank
Defendant -Appellant

(1) Appeal from judgment dated June 24, 2004 granting plaintiff summary judgment is hereby dismissed.

(2) Appeal from a judgment dated July 12, 2004 awarding plaintiff $239.273 against defendants is hereby dismissed

(3) Appeal from an amended judgment dated August 14, 2004 awarding plaintiff $127.635 against defendants is hereby dismissed. HSBC is entitled to judgment because plaintiff has been fully compensated for the $47.600 withdrawn by the former spouse from their account. *

November 10 , 2005 — Signed JoAnn Wahl
Clerk of the Court

* This is an incredibly bizarre decision , explained only by tawdry and sordid bias., and since this perjury and lie by HSBC Bank USA would give them an excuse no matter how bizarre and false after 20 years, they will be "of the hook" so to speak, by having ruled in favor of the hometown icons, even if they are dirty icons. The funds removed were $95.600 there has been no evidence , and there is none in the record that anyone other than petitioner owned the funds in that account. The Court made up the idea that the stolen money came out of a joint account, and in fact they never said so before. This is part of the gift to HSBC bank. In the serial perjury by Marine Midland and their counsel Mr.Miller Esq. had once stated to the same court that the stolen funds were in repose in accounts that were distributed in the marital dissolution were divided 50./50 therefore in the appellate decision dated May 31, 1996 this same court pp Appendix held that petitioner is entitled to 50%.But as it is now known the funds were laundered in the accounts, and were no longer there when the marital distribution took place eight years later .In this very skimpy, inadequate dismissal by the court, which reeks bias and favoritism the court did not touch on 20 years of litigation, on all the appeals this court had adjudicated during that time .Suddenly a new defense -more illogical bias.

STATE OF NEW YORK
SUPREME COURT, COUNTY OF ERIE

Pepi Schafler (Summer)
Plaintiff Index No" H-94139/87

v

HSBC Bank USA (Marine Midland)
M &T Bank Defendants
----------/ NOTICES OF APPEAL

Appeals filed by Petitioner:
July 7, 2005 Plaintiff -Petitioner is appealing the summary judgment order awarding Petitioner only 50% of the stolen funds, as that twisted decision was based on the serial perjury and pathological lies by Marine Midland, HSBC USA and counsel Mr. Miller Esq,
August 4, 2005 Plaintiff -Petitioner Cross Appeals
August 11, 2005 Amendment to cross appeal
August 20, 2005 Supplemental notice of appeal.

All of these were dismissed by letter.

Signed by the Clerk of the Court
JoAnn M. Wahl

State of New York
Supreme Court: County of Erie — Patrick H. NeMoyer J.S.C. Presiding

Pepi Schafler (Summer)
Plaintiff — Index No: 94139/87

v

HSBC Bank USA (Marine Midland)
Manufacturers and traders Trust Co — ORDER
Defendants

Plaintiff having moved for summary judgment , in amount for $47.600 is hereby granted with statutory interest dating to November 8, 1985.HSBC 's cross motion to deny plaintiff's request for full compensatory damages, punitive damages , legal fees and costs , and any amount over $47.600 and other relief is denied.*

June 22, 2004 — Signed, Patrick NeMoyer JSC.

July 12, 2004 — Judgment

On July 12, Plaintiff-Petitioner entered a judgment in her favor against HSBC Bank USA in amount of $47.600 plus compounded interest in amount of $191.673. for a total of $239. 273

Judgment signed and entered by Erie County Clerk

August 16, 2004 — Amended Judgment

HSBC appealed the compounded interest on the judgment and Judge NeMoyer reversed it at once , entering the 9% statutory interest on the judgment , amounting to $80.035.26 which brought the total judgment to $127.635.26

Signed , Patricjk H. NeMoyer J.S.C.

---

*Judge NeMoyer knew clearly of all the sordid frauds perpetrated by MM bank now HSBC bank , and counsel Mr. Miller Esq,. and that each decision in this matter was based on this tawdry serial perjury and deceit by the above named perpetrators, but he acted as if it was all valid, real , genuine and true.

Petitioner-Plaintiff's Motion for Summary Judgment
Dated October 10, 2003*
Supreme Ct. of the State of New York, County of Erie
Justice Patrick NeMoyer Presiding

Pepi Schafler , Plaintiff — Index No: H -94139/87
v — Hearing Nov 14 * 2003
HSBC USA formerly MM bank — 11 a.m.
and M&T bank , Defendants

Motion for Summary Judgment,

Plaintiff Pepi Schafler hereby moves this Court for summary judgment in the above identified matter on her claim for larceny and conversion in amount of $95.200 (ninety five thousand and two hundred dollars) plus interest for the past 18 years since this malfeasance , misconduct , conspiracy and theft occurred in amount of $205.632 , as there are no other issues to be decided, except the scheduling of a jury trial to determine the punitive damages originally set at $250.000, ~~but~~ are now after 18 years to be amended to be calculated pursuant to the CPI (Consumer price index)). Since there are no other issues to be decided , Plaintiff asks this Court to order Defendants to finally and promptly to compensate Plaintiff for depriving her of her money for 18, years and the attendant damages. (In rereading the Plaintiff -Petitioner had neglected to request in this motion restitution for all the legal costs as included in the complaint Since it had become evident that Judge NeMoyer knew nothing about the case ,had not familiarized himself with the extensive files , relying instead on Defendants to tell him what they wanted him to know., this summary judgment motion contains 27 paragraphs . It was also amended on November 1,2003

* This motion for summary judgment, the amended motion and the scheduled hearing all took place before the December 26, 2003 shocking discovery that all the representation throughout those 18 years -now 20 years were fraud and serial perjury, because the embezzled checks were laundered at MM bank: deposited on November 8 1985, and the funds removed on November 25. 1985. Everything else marine or HSBC had to say, were lies, fraud and perverted

The evidence in this matter is strong , simple and direct. The law is clear and persuasive. What needed explaining is the extra ordinary vile criminality , judicial exploitation and kabuki theater by Marine Midland now HSBC USA and counsel Mr. Scott Miller Esq. who is a depraved , despicable pathological liar. Some paragraphs.

(1) On November 7, 1985, Plaintiff was the victim of a conspiracy to steal and convert $ 95.200 dollars which theft and conspiracy was facilitated by Defendant Respondent MM bank now HSBC .

(2) These stolen funds were in two checks in amount of $16.000 and $79.200 which were removed from Merrill Lynch ,deposited at Marine Midland, and paid by M&T bank all without Plaintiff's endorsement. .

(3) Defendants violated their fiduciary duties to Plaintiff.

(4) Defendants were involved in various transactions with the thief , and therefore they suborned the theft of Plaintiff's funds.

(5) Defendants refused all requests and attempt at persuasion to have them return to the account they were stolen from, to allow others to decide the rightful ownership of the funds.

(6) Because Defendants are such accomplished liars, they have distorted the facts, and exploited the judicial system that considers attorneys honorable and truthful- Defendants are not, all to the detriment of Plaintiff-Petitioner.

(7) This serial perjury and criminal misconduct by Defendant - MarineMidland-HSBC USA and Mr. Miller Esq.have caused great harm to Plaintiff -Petitioner.

(8) Counsel for Marine now HSBC , Mr Scott Miller Esq. used to taunt Petitioner's attorneys by saying:" I can do things that you can not ". We assumed that this was about legal fees, because Mr. Miller was a salaried employee at Marine Midland, which he continues to be at HSBC bank USA; wrong assumption. He is able to lie, cheat, commit serial perjury, and act like a common criminal because he is employed by one of Buffalo's iconic institutions.

In the last paragraph plaintiff petitioner repeated her request for the return of her funds , damages and interest

STATE OF NEW YORK: SUPREME COURT
County of Erie
Pepi Schafler Index No: H-94139
Plaintiff
v NOTICE OF MOTION
HSBC Bank USA,
(Formerly Marine Midland bank) Jan 7.2005
and Manufacturers and Traders Trust Co
Defendants.

Motion for the Recusal of Justice Patrick NeMoyer
due to Bias and Favoritism

Plaintiff Pepi Schafler hereby asks this Court to recuse from the above identified matter , thus enabling the Chief Administrative Judge to reassign this case. Hopefully the reassignment will be to someone that does not favor the "twin towers" , the icons of the City of Buffalo : the HSBC USA, and M&T banks.

While the issues are currently on appeal , someone will prevail,and there will be additional activity , which after a trip to the Court of Appeals , will indicate that after 20 years this matter is finally over. This Court has been personally courteous and gracious to this Plaintiff. Legally the Court has been biased, disrespectful of Plaintiff's claim, of Plaintiff's rights , of Plaintiff.s standing, and this has been harmful. This Court has violated .Plaintiff's Constitutional rights to due process and equal protection. It is hoped that the Appellate Division 4th Dept. will address these inequities.

Statement of facts.

(1) Def. HSBC always prevailed in all matters significant or otherwise Plaintiff's objections were ignored. (2) This Court has made no secret that whatever position "de jour "HSBC adopted , it was meritorious and adopted by the Court. (3) At least twice Plaintiff traveled 7.000 miles to Buffalo NY , with all that this kind of travel entails, time, wear and tear on the body, and the costs , just to hear HSBC say that they need an adjournment because they do not yet have a defense. Plaintiff's objection was ignored. (4) It certainly was appropriate for the Court to let the Defendants know that whatever defense they planned to use when petitioner's funds were embezzled , and laundered 20 years ago , is still the only one they have.

(5) Instead, when counsel for HSBC wanted to examine appellate records which were none of their business, this Court said, sure, go look. Plaintiff objected but was ignored. (6) When counsel for HSBC did not find a defense , then they turned to the trial record of the divorce Again none of their business, but this Court said : sure go look. Plaintiff objected but was ignored. all over these records it is stamped "Confidential" but this does not apply to HSBC in Buffalo NY. (7) Well counsel for HSBC decided to look for a defense , demanding information from Plaintiff's divorce counsel, Nelson Zakia, despite the fact that he had provided a 5 page affidavit to the Appellate Div.4th Dept , in 1995 that he had no knowledge of anything in this matter , by order of the court. This Court said : sure go there . Plaintiff's objection was ignored.(8) Finally for the May 2004 hearing on the summary judgment motion HSBC had a "defense" Lies and perjury. (9-10) What HSBC had come up with is that before all the facts of the theft and money laundering by Marine Midland was known , she had used her power of attorney to withdraw marital funds, for marital expenses. These accounts were part of as part of the marital estate and Plaintiff had a right to it The HSBC "defense" had been discredited almost 20 years ago. (11-12) and they were actually estopped from bringing it up. But they respect no laws, no rights, no procedure. This Court said "I agree with your position , that she is not entitled to anything, she engaged in self help, but the Appellate Div. ordered otherwise. But you should appeal because she is going to appeal. " Plaintiff has a name, and many titles, and it was dismissive of the Court to describe Plaintiff who was standing right there as "she" The "self help" comment was an insult, and Plaintiff had objected to it immediately This incident underscores the bias and misconduct. (13) In law school Plaintiff was taught that judges are not permitted to provide legal advise. (14-15) This Court has denied this Plaintiff the right to discovery, the right to damages, the right to legal fees and any other lawful request made. It is hard to imagine a case were the above noted relief is more appropriate the matter at instant. (16-17) Since December 26, 2003 along with Plaintiff this Court has become aware that for the past 20 years, Mr. Scott Miller Esq. and Ms. Tracy Woodrow. Esq and Phillips Lytle have carried forth the legal positions of Marine Midland bank, now H SBC bank through 20 years of fraud,

the most egregious misconduct ,perjury , lies .money laundering . This Court has a duty to act on such misconduct, and represent the interest of the public.(18-19) This is not misconduct and criminality by someone in a dark alley, but rather these are attorneys albeit sleazy ones, Mr. Miller Esq. is seriously impaired either by mental illness, or substance abuse, and this Court is suborning it . They are most certainly for employment in a federally chartered fiduciary institution. Nothing has given Plaintiff reason to believe that such brazen deceitful and criminal misconduct that is routinely accepted from. the Defendants would be tolerated .from her.
(20) When Plaintiff compounded her judgment interest calculation , it was akin to an earth quake . Everybody in Buffalo that could - weighed in on the subject , not because they cared about it, but contradicting the wishes of the court's favorites is just not done.

The State of NY does not have a neat and simple rule for recusal such as Title 28 Sec. 455 of the Federal Rules.The ABA model Code of Judicial Conduct is applicable: Canon 3 ,B (5) " A judge shall perform judicial duties without bias or prejudice .A judge shall not , in the performance of judicial duties , by words or conduct manifest bias or prejudice. A judge who manifests bias impairs the fairness of the proceeding and brings the judiciary into disrepute Canon 3, E holds: 1) A judge shall disqualify himself in a proceeding in which his impartiality might be questioned , when the judge has a personal bias concerning a party(personal interest) counts. This Court's bias and prejudice is visible , obvious and palpable, and that has serious consequences HSBC relies on the Courts bias. A few statements under oath by Ms. Woodrow , that were false and perjured ,and Plaintiff pointed them out. They prevailed anyway. For all these many reasons *, and many others Plaintiff Pepi Schafler hereby asks Judge Patrick NeMoyer to recuse himself from this matter.

Signed, Dr, Pepi Schafler

Counsel for HSBC ,asked Judge NeMoyer not to recuse, so he did not.

*Plaintiff's confidential records that Judge NeMoyer allowed Defendant HSBC to access were simply transferred still stamped confidential and called the record on appeal .and passed around. This was an outrageous impermissible violation of Plaintiff's right to privacy, and Plaintiff will hold them accountable. Judge NeMoyer's bias is not a victimless crime. *Falsus in uno, falsus in omnibus.*

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.
ONE M & T PLAZA, 11TH FLOOR
BUFFALO, NY 14203

816-26590

11350

November 7 19 85 10-4/220

PAY TO THE ORDER OF Donald L Summer and Pepi S Summer $ 79,200.00***

the sum of $79200 and 00cts DOLLARS

M&T Bank
One M&T Plaza Office, Buffalo, New York 14240

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.

BY

Q/A

⑈011350⑈ ⑆022000046⑆ 692-966 ⑈ ⑈00079200⑈

022000020 756209013 NOV-8-85

NO 85 12 PM

PAY ANY BANK, N.A.
CHASE MANHATTAN BANK, N.A.
PAY ANY BANK 30-2

NO 85 08

MARINE MIDLAND BANK N.A.
Statement of account with Statler Office

Account number: 756-20901-3

Donald L Summer
Attorney at Law
Trust Account
Suite 1300 Statler Towers
Buffalo NY, 14202

Summary of activity for the period: 11/05/1985 to 12/03/1985

Date :	Description of Transaction	Deposits	Subtractions
11/08/85	Deposit	79.200	
11/25/85	Withdrawal check		79.200

The money laundering. The criminal serial perjury, the lies, the tawdry , sordid ,despicable and shameful conduct by Respondents.

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.
ONE M & T PLAZA, 11TH FLOOR
BUFFALO, NY 14203

816-26590

11350

November 7 19 85 10-4/220

PAY TO THE ORDER OF Donald L Summer and Pepi S Summer $ 79,200.00***

the sum of $79200and00cts DOLLARS

M&T Bank
ONE M&T PLAZA OFFICE, BUFFALO, NEW YORK 14240

MERRILL, LYNCH, PIERCE
FENNER & SMITH, INC.

BY

BY

O/A

⑈011350⑈ ⑆022000046⑆ 692-966 ⑈ ⑈00079200⑈

NO 35 12 PAY ANY BANK
EAST, 4TH TAMPERS
FIRST ROMPAY
BUFFALO, N.Y.
PAY ANY BANK

PAY ANY BANK, P.M.
CHASE MANHATTAN BANK, N.A.
NEW YORK 10-3

NO 35 08

NOV 8-85

022000020

MARINE MIDLAND BANK, NA
Statement of account with Statler Office

Account number:756-213339

Donald L. Summer-Attorney at Law
Suite 1300 Statler Building
Niagara Square
Buffalo NY, 14202

Summary of activity for the period 10/25/85 to 11/26/85

Date:	Transaction	Deposit	Subtraction
11/08/85	Deposit	16.000	
11/25./85	Withdrawal		16.000

Part two of the money laundering.

HSBC USA 's response to demand for document production
Date : December 22, 2003

State of New York Supreme Court, County of Erie
Pepi Schafler
Plaintiff
v Index H-94139
HSBC bank USA
Manufactiureres & Traders Trust Co.
Defendants

Defendant HSBC's response to Plaintiff's demand
for the production of document s pursuant to NY CPLR 3120

" HSBC states that responsive documents from the relevant time period are attached as exhibit B'the bank statements that indicate that Petitioner's stolen funds were laundered at Marine Midland. Deposited with a forged signature and removed a few days later.

Signed Phillips Lytle et al attorneys for HSBC
by Tracy Sendor Woodrow
One HSBC CEnter, Buffalo NY, 14203

After 18 years of more lies, more serial perjury, more degenerate misconduct finally the evidence denied for a long time: everything that Respondents had said, pleaded sworn to were brazen lies. 18 years of terroristic lies and exploitation of the judicial system and harassing Petitioner.

MERRILL LYNCH
CMA Cash Management Account
Monthly Statement

Account Number 816-26590

Mrs. Pepi S. Summer Phd
Mr. Donald L. Summer
121 Deer Run
Williamsville NY, 14221-1821

Statement Period 10/.26/ 85 to 11/29/85

Your Account Statement As of 10/.26/85:

Cash and securities $116.159.65
Income for the year to date Approx. $8.000

Your Account Statement as of 11/29/85

Cash & Securities .$12.684

While Petitioner did not find out until mid January 1986 of this embezzlement and theft, because the December 1985 statement was stolen, this did not matter much , because despite 18 year of deceit by the Respondents -these depraved degenerate liars, as Petitioner learned on December 26, 2003 the forged checks were laundered at Respondent bank within days of the embezzlement and theft., were converted and removed for parts unknown.
The remainder assets in the account were blocked by two different legal proceedings and two different courts Since the divorce trial and counsel were enjoined by the court not to address, adjudicate or even mention the pending claim against the banks, and the JHO deciding the divorce had a mandate to decide all the issues between the parties, and did not know of the bank claim, he therefore included this remainder in the blocked account in the marital estate as of March 17, 1993. At that point the account had grown to $50.000.

GOLDOME BANK
Certificate of Deposit
Date purchased 10/9/84 maturity date 10/9/85
Renewed to 10/10/ 86/
Account Title and owner Pepi Summer
Initial Deposit amount : $101.127 .10 cts

In addition to creating the conspiracy to steal petitioners funds from Merrill Lynch and launder them at Marine Midland bank Summer attempted to steal petitioner's funds at another bank that was honorable like a bank should be and not dirty crooks like Marine Midland. bank

Letter from Goldome Bank Legal Department

November 22, 1985
To Donald Summer
Suite 1300 , Statler Towers
Buffalo NY 14202

Dear Mr. Summer
Please be advised that the only person authorized to make withdrawals in this account since it was opened in October 1984 is, has been and continues to be Mrs Pepi Summer.
For the period from October 9, 1985 through October 16 1985 due an innocent misunderstanding by an employee of the bank your name was added to the account . During that time however you would not have been able to order withdrawals from this account, because the bank had not, and has not been given the signed documents necessary to give you that authority.

Signed , James R. Peterson, Legal Department.

POWER OF ATTORNEY

To Pepi Summer
121 Deer Run
Williamsville NY. 14221

Acount # 756-213329

dated 12.20 1984 Signed: Donald Summer,
Pepi Summer

Account # 756-7655838
(joint credit card account)

dated 12.20, 1984 Signed Donald Summer
Pepi Summer

These accounts held marital funds, and D. Summer never claimed otherwise, but he obfuscated the truth by speaking "my accounts" "accounts in my name". Petitioner has the the tax return to effectively prove things, and furthermore he was expelled from the law firm where he was an owner-partner for appropriating legal fees and defrauding the partnership. They knew what his personal-outside the marriage assets were and would be ready as witnesses

HARRIS BEACH , WILCOX et al,
Attorneys and Counselors at law
The Granite Bldg.
Rochester NY, 14604 November 25, 1986

Mr. Thomas W. Taylor , Deputy Comptroller District Office
Office of Comptroller of the Currency
1211 Avenue of the Americas
New York, NY 10036

Re: Marine Midland Bank's Failure to
Respect a Valid Power of Attorney.

Dear Mr. Taylor:

Marine Midland Bank N.A is a national bank organized under the laws of the US and chartered by the Comptroller of currency. This letter is to serve as an official complaint against the office of MM.bank with it's headquarters in Buffalo NY, for it's failure to provide our client with records requested under a power of attorney.

Although somewhat complex this is a summary: my client's husband maintains accounts at MM bank, specifically at the office in the Statler Building, and as a result of that he has a number of personal relationships with the employees in that branch.

In early to mid-November 1985, our client, Dr. Pepi Summer pursuant to her valid power of attorney approached Ms.Kennedy an employee of MM bank in the Statler office and requested the bank records for that account. The request was not honored, in fact Ms. Kennedy discouraged this inquiry and making excuses such as : "it will take time, the holidays, cost money etc." She as well as other employees of MM bank completely disregarded their duty to provide these documents. In mid-January 1986 ,Dr.Summer contacted a Ms. Murie in the Customer Serv. Dept who was stunned at this lack of service, promised that she would immediately contact Ms.Maxine Walter an Asst Vice Pres. asked our client provide a $250 as prepayment for the records which she did , and she was assured that the records would be ready in a few days. Well more excuses and they were never provided. * This is a gross violation of MM bank's fiduciary duties, and you are requested to investigate.

Signed David Boysen , Esq., cc: Mr. Charles Mitchow Pres. MM.

* MM bank was covering up the theft, conversion and laundering of petitioner's stolen funds. This conduct is appropriate for organized crime, nos a fiduciary instituion. In this instance there might not be a difference.

THE LEGAL FIELD IN THE ORDER OF SERVICE

Because this matter spans more than twenty years listing the name of attorneys and law firms, judges and courts might be helpful..

For petitioner attorneys and law firms :
Brian Barney, Pauley and Barney , Rochester New York
David Boysen, Harris Beach , Wilcox et al Rochester NY,
Tom D'Agostino, Mattar D'Agostino, Buffalo NY.
Brendan Burke, McGee & Gelman, Buffalo NY
Carl Kustell, Kustell Assoc. Buffalo , NY
Gerald Beckkerman, Beckerman & Beckerman, Rochetser NY
Michael Selter, Farkas & Manelli , Washington D.C.
Stafford Ritchie, Buffalo, NY

New York State Supreme Court Justices ;
Justice Joseph Forma
Justice George Francis
Justice Robert Whalen
Justice Norman Joslin
Federal Senior Judge John Elfin
Justice Patrick NeMoyer

All the four appeals have been filed in the Appellate Division of New York State Supreme Court , Fourth judicial Dept. located in Rochester NY.

Respondent M&T is represented by a law firm
Hodgson Russ et.al in Buffalo NY, Ms Cheryl Storie
of that firm, and now Mr. Stephen Yonaty

Respondent Marine Midland now HSBC was represented by house counsel Mr. Scott Miller, who is now general counsel at HSBC, and they are now being represented by Mr. Michael Powers and Ms. Tracy Woodrow from a law firm Phillips , Lytle et al.

PAULEY AND BARNEY
attorneys at law
215 Times Building
Rochester NY, 14614

January 23, 1986

Marine Midland Bank N.A.
Statler Towers
Buffalo NY, 14202

Merrill ,Lynch, Pierce et al
One M & T Plaza
Buffalo NY, 14203

M & T Bank
One M & T Plaza
Buffalo NY, 14203

Dear Sir or Madam:

This is to notify you that I am the attorney for Pepi Summer 121 Deer Run, Williamsville NY, 14221. My client on reviewing the December 1985 statement from Merrill , Lynch et al discovered withdrawals from an account in which she has a primary interest in the amount of $95.200. Upon further inquiry she discovered that Merrill Lynch had issued two checks numbered 11349 and 11350 on November 7, 1985 on it's account with M &T bank payable to the order of Donald L. Summer and Pepi S Summer , such being in the sum of 16.000 and $79.200 respectively. Thereafter the aforementioned checks were endorsed by Donald L Summer for deposit only into an account in his name only at Marine Midland bank Pepi Summer's signature appears nowhere on the endorsement. Despite this fact the checks were negotiated.

Since the negotiation was affected without any negligent act or omission on the part of Pepi S. Summer , I request that you immediately recredit the Merrill, Lynch et all account of Pepi Summer from which the monies were taken . If you fail to recredit that account as requested , I will advise my client to institute legal action for damages in the amount of Ninety Five Thousand Two Hundred dollars ($95.200).

Signed , Brian Barney.

MEETING WITH MR. JOHN TRASHER VICE PRES. FOR INTERNAL SECURITY . MARINE MIDLAND BANK.

Date January 22, 1986.
Petitioner had met with Mr.John Trasher that day, and each party's history is somewhat different but a lot is the same. Mr. Trasher provided his statement for some internal record kepping system at Marine Midland. This is mostly his statement. though she also has her own. While Petitioner knew that Marine Midland bank was known as a "dirty bank", she really did not know the full meaning and extent of those words in that context. She did not know that they are the most outrageous liars, of their intentional corrupt, sordid money laundering, their gangsterism, their tawdry criminality, in their RICO conspiracy in the present matter Therefore in arranging a meeting with Mr. John Trasher, Petitioner assumed that pointing out the forgery of her checks which could have been by error , was sufficient and it would be promptly corrected, as it would in most honorable banks. Mr.. Trasher said : "look we do this all the time, get yourself a lawyer. "(he did not put this statement in his debriefing history sheet.) Petitioner told him she had a lawyer, but she could not understand as to how he can look at a crime and babble on about something else. He could, and he did.* That day petitioner's lawyer contacted Marine Midland bank. (App)

* Mr . John Trasher had subsequently proven to be an extraordinary liar, perjurer and all around miscreant. All the serial perjured documents and statements generated by Mr. Miller Esq. as counsel for Marine Midland , by law had to also be signed by an officer of the bank. Mr.. Trasher was the designated liar and perjurer.

Summons and Complaint dated June 12, 1987

STATE OF NY, SUPREME COURT, COUNTY OF ERIE

Pepi Summer , Plaintiff
121 Deer Run
Amherst NY, 14221
v
Marine Midland Bank, NA, Defendant ,
One Marine Midland Plaza
Buffalo NY, 14203
and
Manufacturers and Traders Trust Co., Defendant
One M&T Plaza
Buffalo, NY 14203
and
Merrill Lynch , Pierce, Fenner Smith Defendant
1100 M& T Plaza
Buffalo NY, 14203

Summons

You are hereby summoned to answer the complaint in this action within 20 days, or 30 days if service is not within the State of New York.

Attorneys for Plaintiff Mattar, DAgostino, Kogler & Runfola

Complaint

The Plaintiff herein by her attorneys Mattar, D'Agostino, Kogler and Runfola for her complaint against the Defendants herein , respectfully states and alleges:
Paragraphs 1-4 establish the identity of the parties
Pragraph 5: Prior to November 7, 1985 the Plaintiff maintained and held a Cash Manag. Acct in her name and the name of Donald Summer
Paragraph 6: Prior to November 7 , 1985, Plaintiff from time to time would forward to Merrill Lynch various sums of her money to deposit in her account,
Paragraph 7: Def Merrill Lynch maintained the acct at Def. M&T

Paragraph: 8: Prior to Nov. 7, 1985 the acct balance was over $95.200
Paragraph 9:Noting that all of Pl. 's funds placed with or forwarded to Def. Merrill Lynch, et all remained the property of the Plaintiff and M..L.. were the fiduciary of the Pl. and custodian of the funds.
Paragraph 10: M.L. had agreed to return the funds to Pl on demand..'.
Paragraphs 11 &12 hold the fact that former husband went to M.L. demanded funds from the account, and was given two checks in amount of $16.000 and $79.200for a total of $95.200
Paragraph 13 &14 hold that the checks drawn on Def. M&T bank were made payable to Plaintiff and her husband who endorsed them by signing his name alone and deposited them at Def. M.M.bank.
Paragraphs 15-17: The act by husband was without Pl.'s knowledge , consent or acquiescence, were honored by Def. M&T ignoring the order of Merrill Lynch and Pl. has not received any of the funds represented by the two checks

First cause of action

Paragraphs 18 -22.: Pl . realleges par. 1-17. and further states that the actions by Def.. Marine in accepting and converting these checks, they acted contrary to law, and so is their refusal to return the fund.to Pl. who has suffered damages in amount of $95.200

Second cause of action

Paragraphs 22-25: Plaintiff realleges par. 1-21, and states that M&T acted contrary to law and has refused to return Pl.'s $95.200, therefore Pl. is damaged by M&T bank in amount of $95.2000.

Third cause of action

Par: 26-27 Pl. realleges 1-25, M.L. has violated the fiduciary duty to Pl and refused to return $95.200
Par. 28: MM and M&T were grossly negligent and reckless
Par29-30 The actions of all the Def, in refusing to return Pl's monies to her was and is deliberate, unlawful, malicious .all designed to frustrate Plaintiff's rights.
Wherefore, Plaintiff's prays for a judgment of $95.200 against the Defendants, punitive damages in the amount of $250.000,plus attorneys fees and the costs of this action.

Signed , Thomas D'Agostino
Mattar D'Agostino, Kogler & Runfola
17 Court Street, Suite 600
Buffalo NY, 14202

SUPREME COURT, STATE OF NEW YORK,
COUNTY OF ERIE
By: Marine Midland
Verified answer with cross claim dated July 7, 1987
Pepi Summer , Plaintiff
against: Marine Midland bank, NA
Manufacturers and Traders Trust Co.
Merrill Lynch et al , Defendants

While all the irrelevant nonsense and lies put forth by MM do not merit further attention, other than the perjury and lies to the court. and because it is under oath, the lies by these derelicts have long term effects and consequences.
1. Second affirmative defense: Plaintiff is not suing Donald Summer, therefore they are not liable Wrong, wrong,
2. Third Affirmative defense: that plaintiff Petitioner has written a check in amount of $22.000 to herself on January 13, 1986 * with her power of attorney , after the deposit therefore she has been compensated. Wrong .Wrong, a lie and perjury
3. Fourth Affirmative defense, that on January 13, 1986 that Plaintiff had written a $10.000 on a marital account therefore she has received the funds she is suing for. Lies**
4. Fifth Affirmative defense.: that the check in amount of $79.200 was deposited in D. Summer's Attorney trust Acct. and that he continues to hold the proceeds of that check in his attorney trust account pursuant to his fiduciary duties***
The rest is all meaningless trash, lies more perjury.

Signed , Scott Miller Esq.
Affirmed,: signed John R. Trasher
This is followed by a short affidavit from the designated under oath disgusting liar and perjurer Mr. John R.Trasher who is a bank officer. The Mr. John Trasher who told Petitioner more than one year before that Marine Midland embezzles , converts and launders money all the time, who because Marine Midland is bank , a bank officer has to swear to the veracity of what is asserted , and he is a bank officer, and a liar, so his job is to swear the lies and serial perjury
* ** *** continued on the next page.

July 16, 1987
Manufacturers & Trades Trust Co.Response and Crossclaim
The first affirmative defense:
1. Plaintiff has no interest in or right to some or all of the proceeds of the embezzled checks..
This is followed by a few more ridiculous defenses like that, that do not merit being mentioned and they cross claimed against Marine Midland bank.
July 16.1987
Merrill, Lynch, Pierce , Fenner & Smith Inc.
Their response was essentially that they have done nothing wrong.
July 22. 1987
Third Party Verified Complaint
While the whole document is standard Marine Midland fraud and deceit there are a couple of things that indicate collusion by Marine Midland with Donald Summer in this theft.
Parr. 7 . Donald Summer warranted to them , that he has good title the deposit is rightful. and with the consent of the Plaintiff.
Par.8-9 Marine had credited D. Summer's attorney trust account with the sum of $79.200 which and another with $16.000 which he continues to hold in his fiduciary capacity

Signed : Scott Miller Esq.

Signed and affirmed John R,Trasher in an affidavit that he is asserting the truthfulness of the document, and he is signing because he is an officer of the bank and a liar and perjurer

*from the previous page: this check was written on a marital account to which she had an absolute right, after the deposit ,before Plaintiff knew of the theft and 18 years before she knew of the money laundering. Marine's lies, sordid degenerates swindles by which they also exploited the judicial system about these stolen monies and it's laundering was unknown to others until 18 years later. They used some of these lies in the current appeal.
** More lies. These were marital funds duly belonging to petitioner and her spouse and she had a right to them. this right was never challenged.
*** This lie and perjury is pathetic and degenerate . Mr. Miller counsel for Marine is saying that a stolen, forged personal check embezzled and stolen by an attorney belongs in an attorney trust account as his "fiduciary duty " How corrupt and tawdry is that, especially since it is also a brazen lie . This check was laundered at marine midland a few days after deposit. Mr. Miller appears impaired by all his lies , swindles and perjury, he does not know what he is saying, what is right or what is wrong. This lie, was maintained by these crooks for 18 years in various courts, and appeals. HSBC bank USA used another lie from the same source in the most recent appeal.

DECISION AND ORDER BY THE HONORABLE
JOSEPH, S. FORMA
Dated April 1, 1988

Summary of decisions on relevant issues:

Grant Merrill Lynch et al Summary Judgment as there has been no wrongdoing on their part. There is no liability on the part of Merrill Lynch for the conversion of the funds . The cross claim by Marine for indemnification from Merrill Lynch should also be dismissed . Marine is seeking to have their liability to Plaintiff shifted to Merrill Lynch . Marine is demanding a contribution from Merrill for any liability to Plaintiff.
There is reason for any contribution by Merrill to the liability of Marine to Plaintiff. There has been no breach of duty by Merrill.
The action for divorce having been filed on September 1, 1986 was pending in another court before Justice George Francis . While there had been a motion by D.Summer to consolidate this claim with the action for divorce, the court Justice Forma did not order that , but did order that the matter at instant be transferred to Justice Francis as well, to enable him to deal with both matters.

Signed Joseph S Forma
Justice of the Supreme Court.

JUSTICE GEORGE FRANCIS
Special Term Note of Issue
March 6, 1990

Try to settle by having :
(1) Don pay money into JT savings account w/restraint pending resolution EDL issues in course of matrimonial.
(2) Pepi then withdraws actions v banks.

If parties won't settle on this basis , then :
(1) grant Pepi's mtn for partial s/j as to liability only v banks
(2) Grant M7T's cross -mtn for partial s/j v Marine liability only
(3) Grant Marine's cross-mtn for partial s/j v Don Summer (liability only)
Deny Don's mtn for consolidation

Damages to be resolved upon a hearing after EDL issues decided in divorce action.

Hearing March 8.91
All attorneys present: Summer refuses to stipulate to agreement
I told attorneys to submit order as follows ;
Pepi mtn for s/j as to liability v banks granted
M&T cross-mtn for partial S/J v Marine liability only granted
Marine's cros-mtn for partial s/j v D. Summer liability only granted.
Request for damages at trial after EDL issues in div action
Deny DS motion for consolidation.

Reina to submit order. (Pepi Summer).
d.Summer -Vince Tracy
M&T -Doug Edward
Marine-Scott Miller.

Supreme Court of the State of New York
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

Pepi Summer Respondent -Appellant (Plaintiff)

v

Marine Midland Bank N.A,. and Manufacturers & Traders Trust Company, Appellants-Respondents (Defendants)

The above named MM Bank and M&T bank each having appealed to this Court from certain parts the order of the Supreme Court dated September 16, 1992 , and Pepi Summer having appealed from certain parts of said order , and said appeals having been argued by Scott Miller for MM bank, and Cheryl Storie for M&T bank , and Brendan Burke for Pepi Summer, and due deliberation having been had thereon ,

It is hereby ordered , that the order so appealed from be and the same hereby is unanimously reversed on the law without costs , Plaintiff's motion is granted and Defendant's cross-motions are denied.

Relevant parts of the Memorandum: Supreme Court erred Summary judgment order was timely submitted to Justice George Francis.

Entered : February 5, 1993

Carl M. Darnall Clerk

STATE OF NEW YORK SUPREME COURT
County of Erie
The Hon.. George F. Francis , Justice of the Supreme Court, Presiding

Pepi S. Summer — ORDER

Plaintiff

v — Index No: H-94139

Marine Midland Bank, N.A.
M & T bank ,

Defendants ,

Marine Midland Bank N.A., Defend. & Third party Pl.

v

Donald L.Summer, Third party Def.endant.

The Plaintiff hereby moves for Summary Judgment against the Defendants; and the Defendant Manufacturer & Traders Trust Co having cross moved for Summary Judgment against the Defen, Marine Midland Bank, N.A. ;and the Defendant and third party Plaintiff, Marine midland Bank. N.A. having moved for summary judgment against the third party Defendant ; and the Third -Party Defendant having moved for the consolidation of this action with an action pending in this court , titled Pepi S. Summer v Donald Summer ; and the matter having regularly come on to be heard before me on March 6, 1990 and March 8, 1991

Now upon reading and filing the Plaintiff's Notice of Motion dated January 2, 1990 and the affidavit of Pepi S.Summer sworn to December 15, 1989; the Def. Manufacturers & Traders Trust Co. notice of cross-motion dated Febr. 2, 1990, and the affidavit of D.W. Readett sworn to February 1, 1990, together with the annexed exhibit "A"; the Def. and Third -Party Pl. Marine Midland Bank, N.A.'s notice of motion dated January 30, 1990 and affidavit of John Trasher sworn to January 29, 1990 *, together with exhibits "A" and "B" , sworn to on Jan 29, 1990 . and the affidavit **of Scott Miller sworn to on Jan. 29, 1990 together with annexed exhibits "C" and "D" , the third party Def. Donald L.Summer 's notice of motion dated Febr.22, 1990, together with exhibit "A" annexed thereto and the Affid. of Donald Summer sworn to on Jan30, 30 1990, and after

hearing Mattar,D'Agostino (J.Reina Esq. of counsel); attorneys for Plaintiff, Hodgson , Russ et al attorneys for Def, M & T, Scott D. Miller, Esq. attorney for Marine Midland bank N.A. and Vincent Tracy Esq. Attorney for Donald Summer , and due deliberation having had hereon:

NOW upon motion of Mattar D'Agostino , attorneys for Plaintiff herein, it is hereby ,

ORDERED , that the Plaintiff's motion for Summary Judgment against the Def. Marine Midland bank and M & T bank be and the same hereby is granted, and it is further

ORDERED that Def. M & T bank's cross-motion for Sum Judg. against the Def.Marine Midland is hereby granted,

ORDERED that Def. and third pty Plaintiff Marine Midl's motion for Sum Judg. against the third party Def Donald Summer , is hereby granted , and it is further

ORDERED , that a hearing on the assessment of the Plaintiff's damage as claimed in her Complaint , shall be held immediately after the conclusion of an equitable distribution hearing to be scheduled in an action pending in this Court titled Pepi S. Summer Plaintiff, v Donald Summer Defendant (Index No: H-75004), and it is further

ORDERED , that the Third -Party Defendant's motion to consolidated this action with the action pending in this Court titled Pepi S. Summer v Donald L. Summer (Index H-75004, be and the same is hereby denied.

Granted February 22, 1993

Signed Robert E. Whelan ***

Justice of The Supreme Court

*** (Justice Whelan took over for awhile, because Justice Francis had major surgery, and then was transferred to another Court)

This was the primary and last comprehensive decision in the present matter. Thereafter the serial perjurers, crooks and liars were able to bamboozle the courts, even though bias rendered some willing to be bamboozled so that they can insure the buddies would prevail .

* Mr. Trasher an officer of the bank was and is , the designated liar, and serial perjurer, who swear to documents that are false.

** Mr. Miller Esq. is an uncommon pathological liar and serial perjurer. and not one word he ever says or writes is true.

STATE OF NEW YORK SUPREME COURT
County of Erie

ACTION FOR DIVORCE

Pepi S. Summer
Plaintiff Index : H-7500

v

Donald L.Summer
Defendant

Judicial Hearing Officer the Honorable
H. Buswell Roberts Presiding

Decision Dated : February 11, 1993

The Marital Estate: Defendant 's Trust Account
Marine Midland Account No; 756-20901-3, interest bearing
Donald L. Summer Attorney at Law
Trust Account Suite 1300, Statler Towers Buffalo NY 14202

On September 3, 1986 the date of the institution of these proceedings , the balance in the account was $384.054.It is the Defendant's contention is his clients trust account, and that the deposit in and withdrawal from it consists of his clients money, including fees due him or will become due. The Plaintiff asserts that the account consists of Defendant's own funds, all earned since the date of the marriage and is therefore to be considered marital property subject to equitable distribution. I find that relevant evidence disclosed in a proceeding on April 24, 1991 , in the matter of Falk & Siemer Pet. v Donald Summer Resp. Sheldon Benatovich, Esq was questioned and responded thusly:

Q. Did Mr. Summer ever tell you that he could not pay you?
A . No . In fact he would brag to me about his assets and all the money he had in his trust account
Q. Did he ever give you a figure of what was in his trust account?
A. He told me that he had over $400.000 in his trust acct. which which were actually legal fees but he wasn't going to get the money out of there".

I find this account "Trust Account" to be marital property , subject to equitable distribution on September 3, 1986 the day this action was started , when account 756-20901-3. held $384.056

State of New York, Supreme Court: County of Erie
Judge Norman Joslin Presiding
Hearing Nov 10, 1994

Pepi Summer .Index No H-94139
Plaintiff

v

Marine Midland Bank
Manufacturers & Traders Trust Co:
Defendants

Notice of Cross motion by Marine Midland
Sworn Affidavit by Scott Miller Esq, counsel for Marine

.

Introduction :Summer had filed a motion to dismiss the claim against him by Marine falsely alleging that Plaintiff has been compensated , because the "sham trust account "was adjudicated to be part of the marital estate., and since they all falsely and perjuriously alleged that the stolen funds that had been laundered in those accounts- had remained in the accounts. The content of this motion was full of racketeering lies ,but is of no consequence as he is not a party to this proceeding.. There is also the idiocy of saying the stolen money was there , in some general pool indistinguishable from any other money. Justice Francis , who trusted what the liars told him , sought to have the stolen funds placed in a separate account under the court's supervision. Since that was not done, everything else is lies and swindle.

The affidavit sworn to by Mr. Scott Miller Esq. on behalf of MM bank is long, filed with serial perjury, shameless lies about Justice Whelan's order and completely incoherent.

Some pared statements from this perjured affidavit:

1. Marine was never a party to the matrimonial action-(why should they be.?)
2. Summer -their racketeering coconspirator always told them that this matter is subject to control of the matrimonial court (Mr.Miller is a pathological liar and incoherent, but he can read and there were two court orders by Justice Forma and Justice Whelan which are included in this App. that ordered that there be no consolidation of these matters. and that this theft matter should await the completion of the divorce first).

.

3. Knowing that the order by Justice Whelan would be attached to the pleadings for this hearing, Mr. Miller Esq. on behalf of Marine , in a fit of depraved shameless mendacity and under oath , stated that Justice Whelan ordered that Marine participate in the divorce trial.*

4. Mr.Miller Esq further goes on to take issue with Plaintiff's affidavit which asserts that :" the law of equitable distribution, which is applied in matrimonial actions , is different from common -law property rights and banking law statutes. ...

5. Mr. Miller continues over several pages of brazen lies about the courts, and the facts and the law, causing one to wonder about his mental stability.

Signed under oath by Scott Miller, Nov 2, 1994.

Manufacturers and Traders Trust Company

In the same proceeding Ms. Cheryl Storie Esq. counsel for M &T Bank , signed an affirmation under the penalty of perjury joining Defendant Marine Midland in their motion seeking the same relief.

Signed , Cheryl Storie Esq. November 8, 1994.

(M& T and counsel Ms. Storie are therefore also guilty of Marine Midland's perjury, fraud and deceit.)

*Justice Whelan appeared to be fairly strict in his expectations of the conduct of attorneys. D. Summer had lied to him regarding an order. and he immediately held him in contempt with all sorts of consequences. If he only knew the lies and frauds and misuse of his name By Marine Midland , and Mr. Miller.Esq.

Supreme Court , State of New York , County of Erie
Justice Norman E. Joslin Presiding
Hearing on the Motion , Date November 30, 1994

Pepi Summer, Plaintiff
v
Marine Midland and M&T bank, Defendants

Transcript: Relevant matters from same:
Outrageous pathological lies and deceit of the court
by Mr. Scott Miller Esq. for Marine Midland.
Lying about the orders and intent of the earlier judicial decisions*.
Mr. Kustell Esq. Petitioner's counsel had just presented the previous judicial decisions By Justice Forma, by Justice Francis, and by Justice Whelan all holding Marine Midland liable to Plaintiff, and that the damages be determined after the divorce is granted .

Mr. Miller: The point that Mr .Kustell made about liability being found by Judge Francis, there is a little side note that was overlooked by Mr. Kustell that the entry of that order was delayed , because of an issue that Judge Francis wanted decided in the matrimonial. It came back from the Appellate Division,, and Judge Whelan came in and said in an order from the Court let Marine Midland and M&T participate in the matrimonial because "yes marine and M&T it was wrong for you to take the checks with only one endorsement who is entitled to what at what point". Mr. Miller who is rambling on incoherently says that the Honorable Judge Roberts has decided this matter, which is not binding on Marine, but he would like to participate in the divorce proceedings(the divorce was granted one and one half year prior to) and if he decided than we are out of here. If not, send it back to judge Francis (by then judge Francis was in another Court in another city.) Mr. Miller also lied crazily about the issue of the first appeal in which he challenged a timeliness issue.

There is so much incoherent rambling that it is difficult to extrapolate a coherent sentence , he said it was decided, it was not decided, he does not have the orders from the other Justices, they are, or are not binding on Marine Judge Francis may have goofed,

or maybe not. There is an appeal pending but it has been withdrawn. Not one word spoken by Mr.. Miller Esq on behalf of Marine .was true other than his name. Petitioner was in the court room and was shocked at this performance. on behalf of a fiduciary federally chartered institution... She remains stunned by it. He acted schizophrenic, or suffering from some other mental illness.. Mr. Miller bamboozled the Court, which is something deviants are frequently able to do.

Ms. Cheyl Storie Esq. for Manufaturers and Traders Trust Co.:
Ms. Storie joined in Marine's serial perjury, fraud , deceit and lies and had a few lies of her own. M&T has allowed Marine Midland to carry the criminal racketeering , lies and serial perjury forward for both of them, and always joins in a "me to " defense.

The transcript indicates that the Court, Justice Joslin was more befuddled by these lying gangsters ,then judicially confident that he has made an appropriate decision. There are these long pauses and he appears to search for some .words and thoughts. The incoherent degenerates prevented him from adequately consider the facts and the law before him. This was an erroneous decision, a misscarriage of justice and a prima facie example that crooks prevail sometimes..

DECISION AND ORDER , February 7, 1995

Ordered , adjudged and decreed that the action of the Plaintiff Pepi S.Summer vs . Marine Midland bank , N.A. and M & T as well as third party claim Marine v Summer be and the same are hereby dismissed as the issue of damages was determined by the Honorable H. Buswell Roberts in the action entitled Pepi Summer vs Donald Summer due to collateral or direct estoppel and res judicata.

Signed , Norman E. Joslin , Justice of the Supreme Court.

This order based on the lies and exploitation of the judicial system , by these shameless miscreants was appealed.

State of New York Supreme Court, County of Erie
Affirmation
October 21, 1994
Pepi Summer, Plaintiff
vs
Marine Midland bank, and M & T bank ,Defendants

Nelson F. Zakia *, affirms and states under penalty of perjury that:(1) I am an attorney duly admitted to practice law in the State of NY, and a member of the firm of Birzon & Zakia P.C. My firm represented the plaintiff herein, Pepi S. Summer now Pepi Schafler in her matrimonial action against her former husband , Donald L. Summer in Supreme Ct, Erie County. I was the attorney in charge of her case and I was present throughout the matrimonial action to it's conclusion by judgment granting her a divorce from Donald L.Summer.(2) I have reviewed at the request of the attorneys for Pepi Schafler in the above entitled proceedings against MM bank and others , an affirmation by Donald Summer, dated july 23. 1994 , which I am advised has been submitted to the court in support of a motion for summary judgment, claiming that the Decision in the matrimonial in which I represented Pepi Summer disposed of the issues in the above entitled proceeding . (3) At no time were the issues in the above-entitled action, involving a claimed conversion and improper honoring of two checks made payable to Pepi Summer and Donald Summer , without the signature of Pepi Summer , ever determined by the court in the matrimonial action.(4) A pending motion to consolidate the two actions , referred to in Justice Forma's Memorandum of Decision attached to Donald Summer's affirmation was in fact denied in the granting of summary judgment to Pepi Summer in the present matter as evidenced by the last decretal paragraph:"ORDERED, that the third -party Defendant 's to consolidate this action with the action for divorce pending in this court entitle Pepi Summer Plaintiff v Donald Summer Defendant (No H-75004) be and the same is hereby denied ". (5) At no time was relief requested for Pepi Summer in her matrimonial action that would compensate her for the damages she is claiming in the above entitled action..

No such relief was ever granted in the matrimonial action as evidenced by it's absence in the judgment of the matrimonial court.(6) The matrimonial court was never placed in the position where it could determine the issues in the above entitled action, because no evidence was offered as to an analysis of these accounts in the name of Donald Summer for the period of November 7, 1985 to the date of the commencement of the action for divorce , Sept 3, 1986. Whether all or part of the converted funds were still in any of the accounts titled to Donald Summer at the commencement of the matrimonial action could not be determined by the matrimonial court without such evidence. (7) The decision by the Hon. H.B. Roberts indicated it contained the Finding of Fact and Conclusion of law " was also signed by judge Roberts and filed on March 17, 1993, and nowhere in those findings was there any determination of the issues set forth in the above noted complaint. (8) There was never any finding in the matrimonial action of Pepi Summer as to what happened to and how much was left , if any , of the $95.200 subject of the present action. (9)The law applied in Pepi Summer's action for divorce, based on concepts of marital and separate property , and equitable distribution of such property is distinguished from common law property rights and the banking law statutes .(10) Pepi Summer's claim for damages in the above entitled matter was never determined in her matrimonial action, as evidenced by the judgment , decision, and Findings of Fact and Conclusions of Law. The motion to consolidate the two actions was denied before the commencement of the divorce action, and the issues in the above entitled action were therefore not presented for determination , or determined in the matrimonial action.

Affirmed under the penalty of perjury
signed ,Nelson F. Zakia *

* Mr. Zakia is not only a very good lawyer routinely included in the annual listing of the best lawyers in America, but even more noteworthy especially in the present matter, he is a very honest honorable man that brings honor to the legal profession. The courts do not have to verify his representations to same for accuracy and veracity. He had been appointed to the State Attorneys Disciplinary Commission and is often called upon for his judgment when ethical issues confront attorneys .

APPELLATE DECISION AND STARE DECISIS

SUMMER V MARINE MIDLAND BANK

(227 AD2D 932, 643 NYS2D 256)

View This Case Only

Pepi Summer , Appellant v Marine Midland Bank N.A. et al, Respondents-Defendants

Marine Midland Bank N.A. Third Party Plaintiff -Respondent v Donald L. Summer Third party Defendantt-Respondent

Fourth Department, May 31, 1996

Appeal from order insofar as it dismissed third-party complaint unanimously dismissed and order reversed on the law without costs, motions and cross motions denied, and complaint reinstated.

OPINION OF THE COURT

Plaintiff contends that Supreme Court erred in granting the motion of third party defendant for summary judgment dismissing the complaint and third party complaint on the grounds of res judicata and collateral estoppel. Plaintiff's appeal from that portion of the court's order that dismissed the third -party complaint is dismissed because plaintiff did not amend her complaint to assert a claim against third party defendant directly and plaintiff is therefore not aggrieved .With respect to that portion of the order that dismissed the complaint , we agree with Plaintiff that the court erred.

What followed were three long paragraphs reciting the history of case , that ends with issues in the divorce case that were resolved by the NY Court of Appeals (Summer v Summer 85 NY2d 1014).

The Court then returns to the present issues:

While the appeal from the judgment of divorce was pending, third party defendant moved for summary judgment , dismissing the third party complaint in the conversion action on the grounds of res judicata and collateral estoppel . Marine and M& T opposed the motion on the ground that they were not estopped because they were not parties to the divorce action. Alternatively they cross moved that if the issues were resolved against third party def. than the complaint should be dismissed against M&M and M&T as well. The court erred in granting the motion and cross motion for summary judgment.

The doctrine of collateral estoppel "bars a party from relitigating in a subsequent proceeding an issue clearly raised in a prior proceeding and decided against that party where the party to be precluded had a full and fair opportunity to contest the prior determination ".(*Weiss v Manfredi, 83 NY2d, 974, rearg, denied 84 NY2d 848).*The issue of Plaintiff's claim for punitive damages against Marine and M&T could not be raised in the divorce action , and therefore litigation of that issue in the conversion action is not precluded (*Pietras v Gol Pak Corp. 131 AD2D 239)* Moreover the court in the divorce action determined the value of the Merrill Lynch and marine accounts utilizing valuation dates well beyond the date of the alleged conversion and, therefore the judgment of divorce does not conclusively establish the amount of plaintiff's compensatory damages for the conversion. Although plaintiff might otherwise have litigated that issue in the divorce proceeding , she was precluded from doing so by the court's determination to deny consolidation and hold a hearing on damages in the conversion action following the equitable distribution hearing in the divorce action. *Boronow v Boronow, 71 NY2d 284),*Nevertheless , we note that plaintiff is collaterally estopped by the judgment of divorce from relitigating certain issues of fact. First plaintiff failed to establish in the divorce action that the Merrill Lynch account was her separate property. *Plaintiff is therefore estopped by the court's determination that the account is marital property, Second, plaintiff is bound by the court's determination that she is entitled to 50% of the value of that account, and thus cannot rebut the presumption of Banking Law 675 that she is entitled to an equal share of that account ** Moreover to the extent that Marine and M& T can establish that any of the allegedly converted funds remained in the Marine account, as of it's valuation date in the divorce action ***, those defendants may be entitled to offset any recovery by plaintiff. 23 NY Jur 2d .

* , ** , *** See letter to counsel that while the court reinstated the claim they erred in at least 3 major areas. and set some requirements that are untenable.

From Dr.:Pepi Schafler . to Gerald Beckerman Esq.
4921 Cloister Dr. Beckerman & Beckerman
North. Bethesda Four Corners Building
Maryland 20852 Rochester NY, 14614

June 4, 1996
Dear Gerry :
Thank you again for the very good news and congratulations again on your win. You are great.! The court saw through all of marine's lies and summer's manic depressive statements, and did justice by reinstating the claim. However there are a few issues that inexplicably either did not understand, or chose to ignore.
1.* The funds that remained in the Merrill Lynch account after the almost all the money was stolen. The money was removed on November 7, 1985 and the remainder was blocked, and in the 8 years until the divorce trial the funds had grown to $51.000. During the trial Zakia could not bring up this account et al because of the order by Judge Francis and Judge Whelan. Dividing an account 50/50 as marital 8 years after the fact does not make it marital retroactively.. Judge Roberts found that the trust account at Marine was marital on September 3, 1986. Does that mean that it , was marital on Jan 1, on December 10,, 1984 , or does it mean it was marital on September 10, 1992 during the trial ? Clients had some funds in that "trust account" can I go to one of them and say: :he court held on March 17, 1993 that I have a 50% ownership in that account , therefore please hand over the $50.000 Summer's negotiated on your behalf, Summer held money for M&T bank .Should they be cooperative and hand over 50%.? I do not believe so. . What part of time and place relevance did the court not understand, or did not want to know. Some day we need to work on that.. I owned the funds in that account.
2. ** The court also erred in saying that all joint named accounts are equally owned, and the court cited NY case law re chattel The facts and the law cited might be inaccurate and is also not on point.. The Court should have cited the law on forged checks: UCC 3-419 and strict liability

When there are two names on an instrument-a check and it is negotiated with one signature only , that is called a forgery. There is no presumption of equal ownership. This is an issue of evidence. The UCC and the banking laws are clear on that.
3.*** I have been puzzled and continue to be, how one can put money in an account, co mingle it, and than say this is so and so and this is so and so. You remember that for just that reason Judge Francis, after Summer and Miller insisted the stolen funds are in the trust account , proposed a separate account with those funds in it , blocked by the court until a trial. Summer and Miller jerked him around and one or the other disagreed and nothing came of that.
In the decision the App. Div said : "that if any of the converted funds remained in the account , as of it's valuation date in the divorce action, the defendants may be entitled to offset any recovery by plaintiff" What on earth does that mean? In 8 years money came into the account and went. out. Which money was that money? And since that account was deemed marital for one day, am I entitled to all the funds that were there on that day? As soon as Marine said the funds are waiting in the trust account , Marine should have been ordered to remove it from the trust account , and place in a separate account. I have often wondered why none of the judges ever challenged Marine-Miller and Summer when they said the stolen money is in "the attorney trust account" -what is a stolen personal check doing in an professional attorney trust account.? No one did.

Now we move on with the case.
Best regards, Pepi.

After the claim was reinstated , it was followed by exploitative proceedings , frauds, lies and abuses of the Courts by Respondent Marine Midland bank and counsel Mr. Miller Esq. who appears almost dangerously disturbed.

State of New York , Supreme Court , County of Erie
Justice Norman E. Joslin Presiding.
Dated October 1, 1997

Pepi Summer , Plaintiff
v ORDER
Marine Midland Bank, NA
M & T Bank , Defendants Index No: H 94139

The Plaintiff, Pepi Summer/Schafler , by her attorneys Beckerman and Beckerman , having duly moved for a Protective Order pursuant to CPLR 3103 striking , vacating and declaring a nullity a certain notice to produce , notice to admit and notice to take deposition, all dated May 21, 1997, served on behalf of Donald Summer upon the grounds that Donald Summer is no longer a party to the pending litigation. The court then goes through all the submission by the parties. NOW, upon motion of Gerald Beckerman Esq. attorney for the Plaintiff, it is

ORDERED , that the motion for protective order is hereby in all respects Granted on the grounds that Donald Summer is no longer a party. based on the determination by the Appellate Division dated May 31 , 1996 , and said notice to admit, notice to produce, and notice to take deposition , all dated May 21, 1997 served on behalf of Donald Summer , be and the same hereby are stricken, vacated and deemed to be a nullity

Signed Norman Joslin, Justice of the Supreme Court.

This order was appealed by Marine Midland and Mr. Miller Esq.

Appeal

Supreme Court of the State of New York
Appellate Division Fourth Judicial Department
Entered April 1, 1998
Docket Nos: 3134 , and 3135

Pepi S. Summer , Plaintiff Respondent
v
Marine Midland bank, Appellant Defendant

Plaintiff Respondent having moved to dismiss the appeals taken from the orders of the Supreme Court entered in the Office of the Clerk of the County of Erie on October 7, 1997 on the grounds that the appeals are frivolous.

It is hereby Ordered that the motion be and the same is hereby granted .

Signed, Carl M. Darnall , Clerk of the Court

STATE OF NEW YORK
ORGANIZED CRIME TASK FORCE
SUBPOENA Duces Tecum

To Donald Summer , Suite 1300 Statler Towers
Buffalo , New York

You are hereby commanded all business and excuses being laid aside, to appear and attend before Ronald Goldstock , Deputy Attorney General in Charge of the Organized Crime Task Force at a private hearing to be held at
the Organized Crime Task Force , 143 Grand Street
in White Plains New York on May 12, 1989 , 10 a.m.
to testify under oath .
The subject of the investigation is " multi county organized criminal activity involving fraud.
You are required to bring with you all documents listed on the attached Schedule.

Signed Ronald Goldsctock Date May 3, 1989
Deputy Attorney General by Vija Kemanis

Documents requested : All documents related to
Nouveau Construction (the request is extensive)
Katherine Barone (Coniglio), Frank Aloi, 77 Dorset
again very extensive request.

Letter from Marine Midland legal proc. dept dated April 15, 1992
enclosed is signature card for account n/o Nouveau Constr.
c/o Katherine Barone
On the card it says : Introduced by attorney Donald Summer
there is no tax identification number provided.

Signed Lisa Pawlat
9th floor, M.M. Center

In Re Donald Summer's Suspension from the practice of law.
Report Buffalo News January 3, 1998

During the divorce trial The Hon H.B. Roberts became aware of the extensive malfeasance by Summer , with clients funds. Individuals had complained to the Bar Assoc. that Summer had pocketed their funds. The Bar Assoc. has a fund financed by member's dues that compensates persons whose funds have been converted by an attorney. The misconduct -while not at al relevant in this matter was extensive, brazen and outrageous. There had been an evidentiary proceedings by the Bar Assoc. for which Petitioner was called as a witness. The Bar Assoc. had spent $89.500 compensating victims of his fraud, and there was a $60.000 award pending to a man whose house was sold and after the closing Summer pocketed the proceeds. He died and there was an attempt to work with the estate.
There was a trial , and according to the Buffalo News of January 3, 1998, he was suspended from the practice of law for 6 months, and ordered to make restitution to the Bar Assoc. of the funds the Bar had spent up to that point to compensate victims, which amounted to $89.5000.
Reporter, Matt Gryta.

THE SORDID CRIMINAL TIES

Marine Midland Bank and Manufacturers & Traders Trust Co. had nefarious and criminal ties to Donald Summer and a woman named Katherine Gugino Barone (later Coniglio, after she married a prison guard named Coniglio), she of Nouveau Constr. fame, as well as heavy cocaine trafficking, fraud and theft convictions, and most notably numerous prostitution charges and conviction in Western NY, Toronto Canada. and Florida. Pursuant to Buffalo and other area police agencies Ms. Barone was the most notorious woman criminal in those jurisdictions. According to very persuasive evidence , in the Statler building in Buffalo NY, in which Summer had some interest *, but M&T bank held the primary interest, Ms. Barone was providing cocaine and prostitution favors to men from "the banks " that Summer had ties with. Certain people frequented the place regularly. While Summer was able to steal a lot of money from the Statler for himself, and to pay Ms. Barone it appears that Marine Midland may have arranged as payment for Summer to launder money at Marine Midland stolen elsewhere - in this instance petitioner's funds.

Buffalo News , November 1, 1987
Caption: Searches yield drugs , cash but no arrests
Among the homes searched were several homes of Ms.Barone's siblings named Gugino, and her residence at 77 Dorset in the Town of Tonawanda. Large amounts of cash and cocaine was seized, but Ronald Goldstock , director of the State Organized crime Task Force refused to provide specifics.

Statler Towers Inc, M&T Check # 577, July 10, 1984
Pay to Kathy Barone $300, endorsed by Kathy Barone
Deposited at Marine Midland Bank
Statler Towers M&T Check No 599, dated 7.17,84
Pay to Kathy Barone $300, endorsed by Kathy Barone
Deposited Marine Midland Bank.

* Summer stole a lot of money from this project between himself and a couple of cronies close to 1.000.000 dollars.

STATE OF NEW YORK SUPERIOR COURT:
COUNTY OF ERIE
Date: January 14, 1988
The People of the State of New York
against
Katherine Barone Coniglio, Anthony C. Gugino (her brother)
Thomas J Di Pasquale , Joseph P.Cannizzaro ,
Bruce G. Aiello

INDICTMENT

Ronald Goldstock , Deputy Attorney General in charge
Organized Crime Task Force.

The Grand Jury of the County of Erie , accuses the defendants Katherine Barone Coniglio..... this is a long indictment , tedious and the details not very relevant . She was charged with five counts of conspiracy, of bringing the cocaine from Florida,* of transporting it in pizza boxes, delivering it to the others and on and on. .

The Buffalo News /Tuesday , May 9 1989

Tonawanda woman gets prison term in drug case
A Town of Tonawanda housewife , Monday was ordered to serve a prison term of three years to life for her role in cocaine trafficking halted during a 1987 probe by the state's Organized Crime Task Force. State Supreme Court Justice Julian Kubiniec imposed the prison term on Katherine Barone Coniglio 34, of 77 Dorset Drive on her guilty plea to drug trafficking charges. On Friday , Kubiniec imposed identical prison terms on Mrs . Barone-Coniglio's brother Anthony C. Gugino 31.

* Donald Summer accompanied Ms. Barone on many of the cocaine "shopping trips" and they used the marital jointly purchased vacation Florida condominium for that purpose. . .

RE MARITAL PROPERTY RIGHTS AS DIFFERENTIATED FROM COMMON LAW PROPERTY RIGHTS. Checks.
Respondents HSBC USA and M&T bank have concluded that they had a right to determine these rights according to their . wishes, especially if it is convenient to cover up crimes.
The stolen and converted checks were the separate property of Petitioner on Nov 8, 1985. Everything else with Donald Summer's name on it was marital property. He had no separate property.

On January 13, 1986 two month before Petitioner knew of the conversion and theft, and 18 years before she knew of the money laundering of the stolen checks, needing money to pay household bills, especially the taxes for 83 and 84 that remained unpaid, because Summer forged her signature on the return, and claimed very minimal earning , while he traveled weekly to Florida with Ms.. Barone to bring cocaine back for sale and paid the expenses for that, Petitioner went to a branch bank and wrote two checks in her name, one with her power of attorney .for $22.000 and the other a "credit card handi check" essentially a loan check for $10.000 on her credit card.
Check with power of attorney :
Account 3: 756 -13333-9 No: 2288 , date Jan 13, 1986
Name: Dr. Pepi Summer amount $22.000
Signed Dr. Pepi Summer
Credit card handi check not numbered date Jan 13, 1986
Name Dr. Pepi Schafler amount $10.000
Signed Dr. Pepi Schafler.
Respondent HSBC USA alleged that because petitioner had used her own marital funds stored at Marine, or the loan check therefore she had been compensated. for her loss, and if Petitioner where to receive the funds due her , she would be unjustly enriched. The biased Judge NeMoyer - as crazy as it sounds agreed in that with Ms. Woodrow counsel for HSBC. To manipulate and deceive those that want to be deceived HSBC USA used the above noted checks and copies of them on the same page, which gives the impression that there were four checks on each page HSBC said Petitioner had already been unjustly enriched. This defense had been dismissed 20 years ago HSBC was estopped by a general estoppel from usisg it now. The Appellate Court appears to have wanted an excuse to retaliate against Petitioner for labeling the local crooks , as local crooks. and worse.

Supreme Court, U.S.
FILED

(2)

051494 MAY 9 - 2006

OFFICE OF THE CLERK

No: 06-1313

In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

SUPPLEMENT TO

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Pepi Schaffler, BA, MSSS, JD PhD
Petitioner
642 Preakness Drive
Walnut Creek, California 94596
Telephone: 925-938-8743

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division , Fourth Judicial Department
CA 05-00465

PEPI SCHAFLER (SUMMER)
Plaintiff-Respondent

v

HSBC Bank USA (Marine Midland Bank)and
MANUFACTURERS & TRADERS TRUST CO
Defendant-Respondent

MEMORANDUM AND ORDER

Appeal from an amended judgment of the Supreme Court , Erie County (P.NeMoyerJ.) entered August 16, 2004 .The amended judgment awarded plaintiff $127.635.26 against defendants It is hereby Ordered that the amended judgment a so appealed from be and the same hereby is unanimously reversed on the law without costs , the motion is denied , the cross motion is granted in its entirety , and the amended complaint is dismissed..

Memorandum: We agree with defendant HSBC Bank USA formerly Marine Midland bank , N.A. that Supreme Court erred in granting plaintiff's motion for summary judgment and instead should have granted in it's entirety the cross motion of HSBC for summary judgment dismissing the amended complaint against it. HSBC established its entitlement to judgment as a matter of law by submitting documentary proof that plaintiff has been fully compensated for the $47,600 withdrawn by her former spouse from their account and plaintiff failed to raise an issue of fact (*see generally Zuckerman v City of New York, 49 NY 2d 557, 562).* In view of our determination herein, we conclude that the amended complaint must be dismissed in it's entirety. (*see generally Hecht v City of New York, , 60 NY2nd 57, 61-62)*

Entered November 10, 2005

JoAnn M.Wahl
Clerk of the Court